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JUSTICE, EQUALITY AND DIFFERENCE

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DECLARATION

I declare that this thesis is entirely my own work, except where otherwise accredited.

Abstract

A recently debated issue in political philosophy raises the question of how a system of justice could promote equality among citizens while respecting their particularity as individuals with different or even conflicting desires, values and conceptions of the good.

Two lines of thought dominate the debate. On the one hand, liberal philosophers such as Brian Barry (1995, 2001) claim that justice is a matter of impartiality. A liberal policy requires that citizens' particularities be set aside and that everyone be judged according to the same principles of equality and impartiality. On the other hand, feminist philosophers such as Iris Marion Young (1990, 2000) and Clare Chambers (2008) argue that too often liberals underestimate the role played by social construction and group membership in determining the formation of our identities and desires. Recognising difference is therefore necessary for citizens to be treated equally and justly.

The conceptions outlined above are all compelling in many respects although problematic in their own ways. This work tries to determine the extent to which a politics of difference might be preferable to a system of justice as impartiality, and why. Moreover, it addresses the issue of what should be done when a group-based policy runs counter to individual autonomy and well-being, as envisaged by Chambers. Finally an argument is made that Young's approach remains the best proposal towards the realisation of a more equitable society.

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Introduction

A recently debated issue in political philosophy raises the question of how a system of justice could promote equality among citizens while respecting their particularity as individuals with different or even conflicting desires, values and conceptions of the good. Since most of these differences arise from group membership, members of the same social group tend to share similar individual preferences and aims. Hence, recognising difference implies recognising *group* difference, be it cultural, religious, ethnic or gender based.

Two lines of thought dominate the debate. On the one hand, liberal philosophers such as Brian Barry (1995, 2001) claim that justice is a matter of impartiality: no one would reasonably accept being treated less equitably than others in virtue of their belonging to a certain class, religion, ethnic group or gender. According to Barry, differences between citizens should be a private matter where the state should not exercise interference. When it comes to justice, then, a liberal policy requires that citizens' particularities be set aside and that everyone be judged according to the same principles of equality and impartiality.

On the other hand, feminist philosophers such as Iris Marion Young (1990, 2000) and Clare Chambers (2008) argue that too often liberals underestimate the role played by social construction and group membership in determining the formation of our identities and desires. In this view, group and individual differences are a constitutive part of people's lives and cannot be set aside at will. Recognising and valuing difference is therefore necessary for citizens to be treated equally and justly. By contrast, when differences are relegated outside the political sphere, a great and enduring inequality ensues, such that only institutional changes and state intervention could hope to solve.

The “politics of difference” proposed by Young highlights several issues within traditional liberal theory. Young points out that a system of justice should not deal only with distributive concerns, but also support human flourishing and hinder the oppression exercised by a few powerful groups upon the others. Young's theory aims to address the question of how different groups can live together in a respectful and morally enriching way. Chambers, by contrast, focuses on the problem of individual autonomy in view of the discourse about social construction and the influence of group practices. Chambers's approach is directed towards the question of how to counteract

the harmful effects that social influence and group pressure may sometimes have on the more vulnerable members of society.

The conceptions outlined above are all compelling in many respects although problematic in their own ways. It would be of a certain interest, then, to determine the extent to which a politics of difference might be preferable to a system of justice as impartiality, and why. Moreover, it would be interesting to determine what should be done when a group-based policy runs counter to individual autonomy and well-being, as envisaged by Chambers.

In the first chapter of this work, I evaluate Barry's theory of justice as impartiality. In the second chapter I present Young's politics of difference. Then, in the third chapter, I take into consideration Chambers's concerns for the effects of social construction on individual autonomy, and her objections to Barry's and Young's theory. I finally argue that Young's approach remains the best proposal towards the realisation of a more equitable society.

Chapter 1

Justice as Impartiality

1. What the view is

The most influential theory in contemporary liberalism is that of justice as fairness proposed by John Rawls.¹ According to Rawls, a society will likely be composed of people with many different, or even conflicting, conceptions of the good. Thus a system of justice needs to find a way in which individuals with competing conceptions of the good can live together and enjoy a fair distribution of the available resources. In order to do so, people need to reach an agreement and organise their polity by following some principles of justice. These principles can be attained by imagining an original position where the parties involved have to organise a society from the start. The aforementioned parties would operate under a veil of ignorance, meaning they would lack information pertaining the circumstances of their future lives, including conceptions of the good. They would nonetheless be moved by the desire to find such principles of justice, and in order to render them as fair as possible they would only agree on those proposals that can be justified as being the most beneficial to the least advantaged in the society. In Rawls's view, the parties involved in the original position would come up with two basic principles of justice. The first of them calls for a set of democratic liberties for all, while the second guarantees to everyone equality of opportunity and the assurance that inequalities shall be tolerated only when they work for the benefit of the worst-off.

Following Rawls, Thomas M. Scanlon has argued for a form of contractualism in which the parties involved in finding an agreement are well-informed agents that act “unforced” and that are moved by “the desire to find and agree on principles which no one who had this desire could reasonably reject” (1984:111). The main difference with Rawls's formulation of the original position is Scanlon's claim that “what a person could reasonably reject will depend on the aims and conditions that are important in his life” (1984:112). In other words, the reasonableness of a rule can be measured only by appealing to a person's real life circumstances. Hence it is wrong to postulate that the parties involved in an agreement about principles of justice should be under a veil of ignorance. On the contrary, knowing their situation and that of the society in which they

¹ See Rawls 1972.

live would play a pivotal role in determining which actions can be reasonably rejected and which cannot.

A well-known liberal formulation that combines elements from Rawls's and Scanlon's approaches is the theory of justice as impartiality proposed by Barry. This theory is important not only in itself, but also in that it seems to stand in antithesis to the so-called "politics of difference", which we shall analyse in the next chapter. Barry has widely engaged in the debate against various forms of multiculturalist conceptions of justice, and has recognised the advocates of group-based policies as his direct opponents. In Barry's view, justice as impartiality is based "on the terms of reasonable agreement" according to which everyone is treated, and feels to be treated, as an equal (1995:7). The reasonableness in question refers to Scanlon's reformulation of Rawls's original position. The parties involved in the agreement must be well-informed and must hold an equal power of vetoing proposed resolutions. Their interests must be listened to, and everyone must "seek to reach agreement with others who are similarly motivated on terms that cannot reasonably be rejected" (Barry 1995:10). Such an agreement is impartial to the extent that under this rule nobody can claim for herself or her group special privileges that "cannot be made freely acceptable" to other individuals or groups, in virtue of her "high birth, ethnicity, or race" (Barry 1995:8). Indeed, it would be unreasonable for those who do not partake in these privileges to accept such preferential treatment. Justice as impartiality is committed to an equal treatment of all human beings and gives an equal weight to their interests and concerns.

According to Barry "the motive for complying with the demands of just rules is the desire to behave fairly", where "just rules are those that can be freely endorsed by people on a footing of equality" (1995:52). This is also why, in his view, Rawls's formulation of an original position in which the parties involved are under a veil of ignorance – that is to say, they do not know anything about which kind of persons they would be and which conceptions of the good they would hold – is a defective theory. Barry is persuaded that people in such a situation, who do not know anything about their preferences and desires, might only be expected to act as "clones" or "computers" that are informed by the same notions and that reason in the same way (1995:58). For to reach an agreement on a footing of equality people need not to be bound by sameness. On the contrary, they must retain their different experiences and perspectives in order to formulate opinions on whether a proposed rule can be considered as a fair one or not. This is why, according to Barry, the theory advocated by Scanlon represents a better alternative to the Rawlsian formulation. In the Scanlonian approach, "the parties are

aware of their identities and hence of their own interests”, but aim at reaching a reasonable agreement, rather than the realisation of their personal interests (Barry 1995:67).

Barry claims that a system of justice as impartiality can work better towards the realisation of any conception of the good people might endorse because the rules imposed by such a system “leave a great deal of scope for people to live within them according to their own moral ideas” and thus are able to accommodate different or even conflicting moral conceptions (1995:72). Justice as impartiality, in Barry's view, is not founded on any particular conception of the good, and its merits can be measured by its capacity to mediate between such conceptions when they are in conflict with one another. In other words, a system of justice as impartiality is not concerned with goodness, but fairness. Rules of justice must be fair, and they must be able to transcend particular conceptions of the good in order to be applicable as generally as possible.

Barry recognises that impartial justice requires that a set of circumstances be in place in order to function adequately. The first is that the parties involved be willing “to accept reasonable objections to a proposal regardless of the quarter from which they come” (Barry 1995:100). That is to say, objections and proposals must be listened to even when they come from a minority group, and taken into the same consideration as if they were from the majority. However, Barry points out that granting to the minority group in question political representation is not in itself enough to secure to that minority a fair weight of their claims. What is needed, then, is “a polity in which arguments are weighed and the best argument wins, rather than one in which all that can be said is that votes are counted and the side with the most votes wins” (Barry 1995:103). According to Barry, indeed, certain procedures should be in place in order to formulate just regulations for a social compact. For instance, the public should be aware of the proposals on the table and be able to contest them or formulate new ones, in addition to the fact that experts on the matter in question should be consulted and the final conclusion should be rationally defensible against rival proposals. Imagine a case in which a government wishes to introduce a new taxation system. In order for the relevant decision-making procedure to be fair, the government should inform the citizens of its plans and propose some options, so that the whole community might be able to join the debate. At the same time, experts in the field of taxation laws should be asked for their contribution, again for the benefit of the general public. In this way, resolutions about which taxation system to adopt would be arrived at without the interests and proposals of any of the parties involved being overlooked or dismissed.

This would make such resolutions most reasonable, and the process transparent to any objection.

In order for a system of justice as impartiality to function adequately the parties involved in the decision-making process should also be motivated by the desire to cooperate and to accommodate conflicting claims, otherwise either the claims of the majority would overcome those of the minorities or fair legislation would be impeded by, say, any minority vetoing reasonable proposals for the sake of its own interests. Furthermore, people should be informed and able to reflect on the validity of the arguments put forward in the discussion about public policies.

When the circumstances just described are in place, a procedure can be said to be intrinsically fair. As Barry puts it, “the fairness of a procedure has a value in addition to the justice of the decision”, such that even in cases “where the justice of the decision is disputable...the fairness of the process leading to the decision will make it more acceptable” (1995:111). That is to say, procedural fairness is more important than just outcomes. Although it remains desirable for a decision-making process to arrive at just resolutions, these resolutions must be the result of a fair procedure, so that any reasonable person could see the rationale behind them and recognise that no injustice has been committed in their formulation, no matter the outcome.

2. Implications of the view

The main implication of the conception of justice as impartiality is that laws and rules of just behaviour are applied equitably to all citizens without any distinction related to class, gender, ethnicity, sexual orientation, disability and so on. Barry is worried that otherwise some people, or groups of people, would use their social power to foster their interests rather than those of the polity as a whole. In Barry's view, when impartiality is not the guiding criterion of legislation and public organisation, great inequalities might ensue.

These inequalities are not simply considered as something bad because of the deleterious effects that they have on the social compact, but also bad in themselves, as they are contrary to those principles of reasonableness and fairness to which Barry often appeals. Indeed equality is the basis for a fair participation of everyone in the process of deliberation of just resolutions and rules. To be just, rules must flow from a reasonable agreement between people who are moved by the desire to live together with others in the best possible way. This implies that every time an important decision needs to be

taken, citizens – together with the experts in that field – should be able to express their opinions on the matter and propose solutions to the problem without fear of being restrained or seeing their contribution dismissed as a consequence of their belonging to a disadvantaged group. Thus the most reasonable solution proposed would also be the one that is adopted.

Besides equal treatment of all citizens and equitable participation in the decision-making process, justice as impartiality requires procedural transparency. In short, people should participate equally in public decisions, but they should also be permitted to track the whole process from deliberation to practical enforcement, and to assure that it is fair. The civic debate that precedes a given deliberation, together with the transparency in applying the solution thus arrived at, imply thus that a system of justice must be fair in every step of its procedures, and that everyone be able to check that what is going on is what was beforehand agreed upon.

Barry is persuaded that treating people impartially and allowing them a full political participation in public decisions is an antidote against inequality. He recognises that in the real world no society will ever reach the ideal of perfect impartiality that he proposes to adopt, but he claims that what we should do is to get as close as possible to this ideal as we can. By treating individual and group desires, interests and conceptions of the good in the same way a polity could secure that no one suffer oppression or marginalisation caused by her social position, and we could fend off many forms of intransigent fundamentalism – be it political, religious, moral or of any other kind.

Indeed, according to Barry, “no conception of the good can be justifiably be held with a degree of certainty that warrants its imposition on those who reject it” (1995:169). In other words, all conceptions of the good are subject to a degree of uncertainty, since a counterargument may come at any time and refute their validity. Therefore, we must remain critical towards every conception. Since our own beliefs must always remain provisional (for they cannot be proved to be irrefutable) and since we cannot force other people to endorse them against their will (nor they can force us), the best measure to adopt in order to avoid destabilising social conflicts is to leave everyone free to pursue her own conception of the good without any external imposition. This is an especially useful measure when dealing with religious matters, but Barry extends it to other issues such as sexuality. Thus, in the same way as “the only generally acceptable basis for freedom of worship is equal freedom for everybody” (Barry 1995:83), sexual freedom is guaranteed only when, for instance, homosexuality is not restricted or prohibited. The advantage of justice as impartiality, then, is that

nobody needs to enlarge her own conception of the good in order to accommodate for conflicting conceptions. When impartial justice is in place, the only principle that a person is required to accept is that of being tolerant towards religious and sexual claims that do not coincide with her own, and to evaluate them with a view of fairness and reasonableness.

3. Objections to the view

Barry's theory of impartial justice treats people as agents capable – and willing – to evaluate competing claims with fairness and to cooperate among themselves. The end to which such a system of justice aims is equality, intended as the capacity to enjoy the same rights of participation, respect and available opportunities. In this system, no particular standpoint or conception of the good occupies a privileged place above the others, but all the reasonable proposals are taken into consideration and evaluated according to their intrinsic merits.

However, one might argue against Barry's theory that “there would be something crazy about a world in which people acted on an injunction to treat everybody with complete impartiality” (1995:194). That is to say, it would be preposterous to expect people to reserve impartial treatment to their children, or to regard a stranger's claim of being rescued from a life-threatening situation as perfectly equal with the same claim made by one's own spouse, when only one of them can be saved from the peril. It must be noted, however, that Barry never says that the criteria of justice as impartiality should regulate every aspect of our social interactions with other people. That is to say, impartiality should be the guide when institutional matters of public interest are concerned, but does not extend its claims over private aspects of a person's life. There is nothing morally wrong in favouring one's own family members over other people, or in preferring the company of a friend instead of that of a stranger. Apart from this, Barry maintains that the concept of impartiality that he is defending is a second-order one, that is, “a test to be applied to the moral and legal rules of a society”, while his critics are concerned with a first-order concept of impartiality “as a maxim of behaviour in everyday life” that Barry for his part does not endorse (1995:194). For, as he makes clear, moral and legal rules of acceptable behaviour must be the result of a reasoned debate in which even competing conceptions of the good are respected, without any impositions from above.

The difference between first and second-order concepts of justice plays a pivotal

role in Barry's theory. On the one hand, first-order conceptions of justice address the specific norms of behaviour that must be counted as morally just. On the other hand, second-order conceptions relate to a broader vision of what counts as fair and what does not. In Barry's view, while a second-order conception of justice as impartiality is concerned with principles such as fairness of the decision-making process, equality of opportunity and reasonableness of the agreement, it does not specify how such fairness, equality and reasonableness must be realised in all the circumstances of life, but simply defines some broad criteria with which to assess them. By contrast, a first-order conception of justice would prescribe certain courses of action as appropriate while ruling out others, and overall it would delineate a set of "maxims" to follow in every occasion. This is not what Barry is interested in, not the least because he is persuaded that, as noted above, impartial justice does not cover any aspect of people's existence.

Nonetheless, one might still argue, as Alasdair MacIntyre does, that justice as impartiality is a "contentious" theory, in that it purports to adopt a neutral stance towards conflicting conceptions of the good when in fact it is but a version of "liberal individualism", and thus rests on a particular conception of what rationality is and, we may add, what justice and the good are (1988:3-4). In other words, MacIntyre claims that even a liberal theory such as Barry's one, that aims to treat every conception of the good in the same way, does indeed rest on a particular conception of the good itself. To MacIntyre's claim, Barry responds that his theory is indeed contentious and non-neutral if that means not being universally accepted. According to him, however, there are two senses in which impartial justice is a neutral theory. The first is that justice as impartiality is not committed to any first-order conception of the good, as we have seen, while the second is that "it proposes that all conceptions of the good should...be treated equally", which is something that first-order conceptions would not allow (Barry 1995:123).

However, some might claim that for a theory to be neutral it does not amount to general acceptance but rather to the adoption of a purported neutral stance towards the world. If that is the case, then no theory could be considered as a neutral one, not even justice as impartiality. As Barry affirms early in his book, justice as impartiality is committed to the equal treatment of every individual that falls under its scope. To a certain extent, then, impartial justice seems to rest on a very particular conception of the good: one in which equality is the ultimate end of social policy. To see how equality is considered the good in which justice as impartiality purposes, we could imagine a kind of justice flowing from a different conception of the good, for instance one in which the

ultimate end is the eternal union with God in heaven. In such a conception of the good, equality would be seen as something which is valuable only to the extent that it contributes to the realisation of this peculiar end or, if the religion in question is organised in a strictly hierarchical way, equality might even be seen as an impediment to it.

Another problem with Barry's theory is his enunciation of the "reasonable agreement" requirement. First of all, it remains unclear what "reasonable" in this context exactly means. Is reasonable synonymous with rational, and if not, in what way is it different? As MacIntyre again notes, "any substantive set of principles of rationality" is endowed with an "inescapably historically and socially context-bound character" (1988:4), so that finding a definitive way to exemplify what rationality universally means might be impossible. Is there any criterion, in Barry's account, according to which something might be considered as reasonable or not? Moreover, if we base our agreement on reasonableness, are we not excluding from such an agreement those people who are considered as "less reasonable", e.g. children or those affected by mental disability?

Second, the extent to which people are moved by the desire to reach a reasonable agreement remains controversial, in two senses: we could think about people who do not want to reach a compromise with others but just to follow their way of life and impose it on others; and we could also think of people who may not give any importance to "reasonableness" because they believe that a social compact should be founded on a different principle, e.g. faith. Thus, for instance, religious authorities all over the world have managed to define state policies in accordance with their moral requirements, and to act more or less overtly against the interests of minorities, homosexuals and women. If someone were to object to any of these authorities that what they are doing is unreasonable, they would probably respond that human rationality is nothing when compared to God's will, and that such will must not be called into question.

The same reservations that one might have about "reasonableness" concern the concept of fairness. In particular, why should people be motivated by the desire to behave fairly, as Barry postulates as a requirement for his system to work? Besides, people often disagree on whether certain rules are fair or not. Take for instance the parallel that Barry establishes between the importance of one's own religious beliefs and her sexual orientation. As Barry puts it, "[i]f freedom to worship in the way you think right is of a great importance to your own ability to live what you regard as a good life,

then you are asked to accept that it is important to others too”, and the same applies to sexual habits (1995:84). Since impartial justice “appeals to fairness rather than goodness” (Barry 1995:85), people are not required to change their conception of the good or to include different conceptions into their own, but simply to value the fairness of the rules that permits sexual and religious freedom. However, the followers of a particularly intransigent religion might argue against freedom of worship that this is unfair towards their God. Moreover, someone might oppose sexual freedom by saying, for instance, that homosexual acts are against not only God but also nature, and that they should be prohibited in order to prevent homosexual individuals from doing harm to themselves and to others. For these people religious and sexual freedom would be highly objectionable and unfair, and they would not wish to reach an agreement with others on these terms.

The fact that an agreement might be difficult to reach among people who disagree on what is fair represents a problem for Barry, since the Scanlonian system on which his own theory is grounded allows for people to exercise the power of vetoing those deliberations that they find unfair. In this way, everyone could have the last word over the propositions advanced before they are approved. That would be especially useful for those groups who represent a minority of people or those whose voice was not strong enough in the preceding steps of the decision-making process. However, one might fear that giving veto power to the parties involved in an agreement would render the conditions of such an agreement extremely difficult. For it seems that in this case a resolution must be approved by all the parties involved, instead of just being accepted by a fair majority. Besides, what would happen if, say, a small minority kept vetoing certain resolutions which are regarded as just by everyone except this minority? Imagine, for instance, rules against sexual and gender discrimination. There will be some groups, especially religious ones, who would hardly consent to treat women equally, and even less to let everyone express her own sexuality freely. As noted above, different people might have different conceptions of what is reasonable or fair, so that reaching a general agreement by treating every position with the same grade of inclusion and respect would be a hard task to accomplish.

I shall deal with these problems in the next section.

4. Response to the objections

Barry would not agree that justice as impartiality is an approach based on a

particular conception of the good. This is why he refuses to accept McIntyre's claim that impartial justice, while purporting to remain neutral between different conceptions of the good, is in fact a form of liberal individualism. Indeed Barry argues that liberal individualism can take either autonomy (intended as self-determination) or want-satisfaction as its conception of the good and that, in contrast with these two, "justice as impartiality remains an alternative approach, and generates a different (and more acceptable) form of neutrality" (1995:128). In Barry's view, a conception of the good as autonomy is not as neutral as impartial justice. While the former would entail a preference for those policies that foster people's self-determination over those who do not, impartiality regards justice as a matter of procedural fairness and thus is "procedurally neutral" (Barry 1995:132).

As for the conception of the good as want-satisfaction, Barry links it with the utilitarian theory. He admits that utilitarianism is similar with his formulation of justice as impartiality in that both systems try to mediate between different conceptions of the good, but points out that the two theories "arrive at their conclusions by different routes" (Barry 1995:141). While utilitarianism aspires to the minimisation of harm, maximisation of want-satisfaction and the realisation of desires, justice as impartiality does not entail the pursuing of any particular good over the others but allows that "the partisans of different positions defend them on the basis of their conception of the good" and try to persuade others that their conception of the good is a valid and acceptable one (Barry 1995:143). As noted above, what is central in a system of impartial justice is fairness of the procedures, rather than simply their outcomes. What is neutral, then, it is not an evaluation of conflicting conceptions of the good, but the process through which such evaluation is arrived at.

A great advantage which justice as impartiality has over other theories, then, is that it maintains a general scepticism towards every conception of the good, instead of trying to combine some of them and to employ them as its foundation. As Barry points out, nobody can ever be certain of the absolute legitimacy of her claims. Scepticism must also be maintained in relation to the claims made by others, which can equally fail to be valid or legitimate. Impartial justice tries to step back from all the particular conceptions of the good, and thus – at least according to Barry – is able to adjudicate between them when there is a controversy or debate. From this it follows that there might even be conceptions of the good that, after accurate consideration, cannot be regarded as worthy of being aimed at by those involved in a reasonable agreement.

As for the "reasonableness" required by such an agreement, Barry never fully

explains the extent to which it might be considered as synonymous to “rational”, but certainly he does not seem to see it as connected with rationality in a strong constitutive sense. In his review of McIntyre's book he has denied that there is any strong consensus about the role of rationality among liberal theorists,² while in *Justice as Impartiality* he downplays even more the extent to which his theory appeals to this concept. For Barry, reasonableness is a less demanding requirement than rationality, but it suffices for impartial justice to be effective. Hence we could say that an agreement is reasonable if the parties involved accept to be guided by the use of some kind of argumentative reason in which different standpoints are discussed and reflected upon with a mind free from mere self-interest. In the end, what makes people willing to reach an agreement is their desire – and need – of cooperation. When people are moved by this desire along with the other conditions highlighted in the first section, then a reasonable agreement is made possible. Certainly, sometimes it is not enough that an argument be grounded in reasonableness for a just outcome to be brought about. But what the kind of argumentative process envisaged by Barry can secure is that the outcome is the result of a decision arrived at in a transparent and fair way.

After all, Barry is not concerned with just outcomes as much as with fairness of the decision-making process that brought those outcomes about. In this sense, he could not object much to the decision of prohibiting all religious practices but one, or to make homosexuality prosecutable by law, if those decisions were arrived at by an open debate in which every argument is given the same weight and such an agreement on these matters is reached. In his view, what needs to be fair is the procedural aspect of a law and its application, rather than the content of the law itself and its outcomes. This fairness does not rest on any particular conception of the good, for it is interested only in the formal aspect of the law without prescribing any specific content for the law itself.

As for the desire to behave fairly and reasonably, Barry recognises that “there is no argument capable of instilling in someone who lacks it the desire to act in ways that can be justified to others” (1995:182). Although he is not really concerned with this problem, as he points out that this desire is generally “widespread” and that everybody in principle is able to recognise that following it has “practical implications” that can be recognised as advantageous by many (Barry 1995:168).

Finally, against the concerns that the question of vetoing power might raise, we can point out that the parties involved in the reasonable agreement are well-informed

2 See Barry 1989.

agents that do not act out of self-interest but are moved by the desire of cooperation and fairness. If that is so, none of them would feel any strong motivation to boycott just resolutions just for the sake of impeding an agreement of out of personal selfishness. Besides, it would run against one's own interests to hinder just deliberations without any reason supporting such a behaviour, for others might refuse to cooperate on a different occasion of deliberation. Nonetheless, someone might remain persuaded that giving veto-power to all groups involved in a decision poses more problems than it is able to solve. For even if the people involved in an agreement wished to act reasonably and to cooperate between themselves, we could still not rule out that there will always be someone among them that disagrees with a certain policy. Perhaps, then, we could retain the general theory while dismissing this particular point. Otherwise, we could state that veto power over certain policies should be granted only to those who will be directly affected by such policies. It must be noted, however, that this is a solution that Barry would probably not accept, since it would contradict his claim that everyone should be treated impartially, and should not enjoy special privileges as a result of her social position.

5. New objections

Having formulated a response to some objections to Barry's theory of impartiality, we can turn now to two main issues that are left unaddressed in his approach. The first is related to the problem of the social influence individuals are exposed to, which contributes to the formation of their desires and beliefs, while the second relates to the question of whether impartiality is the best and only means to achieve equality.

Barry talks about disadvantaged groups as if their main problem were that their voices remain unheard in the debates about which decisions to make for the interest of a polity. According to Barry, when justice flows from any particular conception of the good there will be people who will stand to lose from it and who will be hindered by the privileged from achieving an equal status. If they could speak their minds, knowing that their different standpoints would be respectfully taken into consideration, they could then bring to the whole community their argumentative contribution and guarantee a fair decision-making process.

However, contemporary democracies do not work in this fashion, that is, there is no such direct participation of every citizen to all the decisions regarding legislation and

policy. Thus Barry's idea states that for a person to express her desires and needs freely it is sufficient to grant her the possibility to do so, which is a simplistic account of how things work in the real world. The reasons for which a member of a disadvantaged group can be prevented from changing her situation are various, and can be explained only by taking into account the phenomenon of "social construction". The kernel of this phenomenon is that people find themselves to be in a certain social context from the moment they are born and that this context influences their lives to such a great extent that we could not have the same persons in a different situation. This thought has also been backed by MacIntyre, as seen before, and more recently by Michael Sandel, who has pointed out that there can be no person (or, in his words, no "self") without a community surrounding her.³

We can then say, that the social world shapes an individual's beliefs, desires, preferences and habits to the point that we cannot even say that individuals exist before and separately from the social reality in which they live. Those who are able to influence society to a greater measure are the most powerful, and they can use different means to achieve this scope. Governments, for instance, exercise discipline and various forms of control over their subjects. But the power exercised over individuals does not always assume the connotations of coercion. Rather, it is spread in a myriad of everyday practices and cultural forms. In other words, social influence over a person's identity may be so pervasive that one begins to internalise her situation, and to accommodate her interests and aspirations in relation to the options available to herself and as a consequence of the social education she has received. That is to say, not only the social environment in which a person is born determines to a certain extent that person's identity, but it can also limit her capacity to make free and autonomous choices.

Why is this discourse relevant to the claim that a fair system of political participation would render a social compact more equitable? Because, to start, if we admit that relations of power and oppression affect not only rules of justice but pervade every feature of our society, then a system of justice as impartiality – which, as Barry makes clear, would not regulate every aspect of a person's life – would not be in itself enough to free the disadvantaged from domination and marginalisation. In many contemporary democracies, for instance, there are already rules stating that all citizens are equal before the law, but that is not sufficient to put an end to racial and sexual discrimination, among other things. This happens because even if acts of overt discrimination and exploitation are publicly condemned, ethnic minorities and female

3 See Sandel 1998.

citizens remain the target of more subtle forms of prejudice and unjust behaviour. We might think to the many instances of everyday practices in which women are regarded as having less authority than their male counterparts, being considered as less reliable, or judged more by their correspondence to a certain feminine ideal than by their professional capacity. Similarly, we might think about cases in which people belonging to minority groups are treated with diffidence and disrespect, or unjustly exposed as being delinquents who strive to disrupt the well-functioning of a polity. It might not be enough, then, to give people an equal set of opportunities without securing everyone's capacity to take advantage of those opportunities. For being formally granted an equal status while continuously being treated in a less than equitable way has an effect on the people involved, as we shall see later. As Barry himself recognises, "we should not be so simple-minded as to confuse equal treatment with identical treatment" (1995:227). He affirms that in order to treat people equitably we need to determine if there are any relevant factors that render these people different and thus reserving a different treatment. However, in his view, characteristics such as race and gender cannot be considered as belonging to this category of "relevance".

Hence, the first problem that every-day practices and cultural norms pose to Barry's approach is that, beside determining the inferior status of groups that would otherwise enjoy the same level of equality, they can trigger the capacity of the disadvantaged to recognise their situation as it really is and hinder their ability to counteract it. A woman may experience various kinds of abuse, prejudices and social pressure and as a consequence of that adapt her desires and aspirations to the feasible options available to her. Similarly, a person may be born in a stigmatised minority group, and hence lack the same social opportunities of his privileged contemporaries, thus preferring to dropping out of school at an early age rather than pursuing more ambitious aims. More than that, a woman who has learned that somehow she is socially worthy of less respect than a man, may begin to see this situation as the norm, and to believe that infringements of such a norm are morally questionable. Similarly, a person of humble origin who has served high placed people for most of his life may assume a reverential attitude towards his employers and regard himself as an individual of an inferior cast than them.

We might think that the woman and man in the first case – the ones who have lowered their aim to accommodate the reality of their social position – may find the roads open to them satisfying enough and may come to like the existence they lead. After all, everyone of us has to adapt to a certain extent to what is available around us.

The problem for Barry's theory of impartial participation is that the standpoint from which these people – and all of us – view the world and themselves is absolutely not a neutral one. Their desires are already not free from any influence or constriction and what they would argue throughout the course of the discussion would be at least in part shaped by certain existing power relations. If that is the case, then the privileged would be more able to mould the course of the debate in a way that is more favourable to them.

This issue is even worse if we consider the woman and man in the second case – namely, those who have completely internalised their oppressed situation. We might think that they would not even recognise the extent to which their desires and beliefs have been formed by the forces present in the society in which they live. Even if these people were granted an equal capacity to participate in public decisions, their contribution would most probably reflect the interests of the privileged ones. Or worse, they would not even be interested in participating in the debate, because they would think that the decision-making process is not something that pertains to them, but rather to those who have superior abilities and resources than them. That is to say, not only individuals adapt to the social environment and conditions in which they find themselves, but this phenomenon of adaptation may, in turn, trigger their capacity and willingness to participate into the decision-making processes of their community.

Adaptation to one's own conditions and, in light of it, the apparent impossibility to realise impartial justice just by allowing citizens to participate in matters of public concern, lead us to the second problem posed by the theory of social construction to Barry's system. That is to say, is treating everyone in the same way an adequate means to achieve equality among all the citizens of a polity? This problem is connected with, but different from, the first one. For the first problem concerns the idea that people are influenced by social construction in all aspects of their lives, especially in those which are not covered by a principle of justice as impartiality, and thus come to internalise their situation to the point that their enjoyment of equal opportunities and their full participation in the decision-making process of a polity are compromised. The second problem deals instead with the fact that justice as impartiality is unable, by itself, to guarantee equality among the citizens of a community.

Impartial justice has a certain appeal, in that it states that privileges related to gender, class, ethnicity etc. must be abolished and that everyone must be granted equal rights and respect. The force of this argument lies in the fact that the reason for complying with rules guarantees that no standpoint is taken to be superior to others, and

in that the fairness of such rules is granted by the transparency and inclusiveness of the process, in which every individual is enabled to take part. However, by admitting that every person is more or less heavily influenced by social context we could be prompted to think that equality, intended as the capacity to enjoy the same opportunities and to be granted the same respect, cannot be realised simply by treating everyone in the same way as if their socially differentiated positions were irrelevant. Indeed the cases envisaged before demonstrate that giving people the possibility to express their needs and points of view would not be an efficacious means to end oppression, given that those needs and viewpoints are partly shaped by existing power relations in which they stand to lose. That might mean that, if we treat everyone impartially, those who come from a disadvantaged starting point would remain that way. That is to say, justice as impartiality is designed to prevent privileged people from achieving more than what the others have; however, it is not designed to empower those who have less to achieve the same that the privileged ones have. Barry's theory is concerned about how to eliminate those advantages that people may have in virtue of their wealth, class, gender, ethnicity and so on. We might say that these people could be identified as the rich, upper-class, male individuals that belong to the most powerful ethnic group in a certain community. However, impartial justice seems to have little to say for the disadvantaged individuals, who often need much more than the plain recognition of their equality in order to reach the same social and political status of the privileged ones. Impartiality thus seems able to fend off gross injustice, but not to realise that equality that it proposes to bring about.

Indeed it is not enough to treat people in the same way to render them equal. Those characteristics that cause many to be discriminated against and hindered from reaching an equal status cannot be eliminated, nor can they be dismissed as if they were only superficially relevant. A person's gender, ethnicity, sexual orientation, religious beliefs, disability and so on are not characteristics that can be simply ignored if we are to pursue fairness. For these aspects of a person's life determine her social status and the kinds of social experiences that she will have in her interaction with the wider community. This is not to say that principles of equality should not guide decision-making and legal processes. But as Barry would say, justice should not be concerned with the content of the rules as much as with their intrinsic fairness. Therefore, we might point out, justice should not prescribe that rules of equality have the same content for all, but they should be designed so as to enable the disadvantaged ones to enjoy the same social and political status as the privileged ones.

In her formulation of the politics of difference, Young claims that a fair system

of justice should take into account people's differences and make them its central concern. Young shares several premises with Barry's theory. She also considers herself as a liberal theorist and argues that the end of justice must be equality. However, Young proposes a completely different system of justice than the one defended by Barry, that is, one that is based on the recognition and empowering of differences rather than on the levelling of them. I shall deal with this kind of justice in the next chapter.

6. Conclusions

In this chapter, I have presented Barry's theory of justice as impartiality. The aim of such a theory is equality, to be reached by means of a reasonable agreement between well-informed agents that are motivated by the desire to behave fairly. Justice as impartiality claims to be neutral, that is, to rely on no particular conception of the good. Indeed, it purports to take into account every conception of the good and to include their arguments in the debates about those decisions that need to be made for the collectivity, and in which every part of the society is welcome to participate.

I have then highlighted some problems pertaining to impartial justice, some of which are recognised by Barry himself, and tried to formulate a response to them. They address the fact that justice as impartiality cannot hope to regulate every aspect of our lives, that it is not a neutral theory, that the terms of reasonable agreement and fairness might not appear acceptable to some, and that giving the parties a veto power could render an agreement hardly feasible.

Furthermore, I have taken into consideration two further objections against Barry's theory. The first objection, or problem, states that social construction influences people's beliefs and desires to the point that giving them the possibility to participate in a debate about public decisions could still favour the privileged ones, for they are the ones that have more power to shape the world of the disadvantaged ones. The second problem is that, given the difficulties posed by social construction to the social and political advancement of the less privileged ones, we might need something more than sameness or identical treatment in order to realise equality. I shall conduct a more in-depth analysis of these two criticisms in the next chapter, where I shall address Young's formulation of a politics of difference.

Chapter 2

The Politics of Difference

1. What the view is

Young affirms that she was prompted to formulate her theory of the politics of difference by the desire to investigate “the implications for political philosophy of the claims of new group-based social movements” such as “feminism, Black liberation, American Indian movements, and gay and lesbian liberation” (1990:3). In her view, these movements pose a real challenge to traditional conceptions of justice, for they call into question the immutability of certain institutional structures and the “tendency to reduce political subjects to a unity and to value commonness or sameness over specificity and difference” (Young 1990:3).

Thus Young, while not denying the importance of distributive concerns within a society, points out that these concerns alone are insufficient to make sense of the social context of human relations. She recognises that some theorists, following Rawls, understand distribution as a paradigm that covers not only wealth-related factors or material resources, but also “nonmaterial social goods such as rights, opportunity, power, and self-respect” (Young 1990:16). However, Young argues that the social structure and institutional context of people's interactions with each other are both obscured and presupposed by an excessive attention to distributive concerns. Hence an adequate conception of justice should not rest on a more or less broad definition of distribution, but rather on the concepts of oppression, referring to “the institutional constraint on self-development”, and domination, referring to “the institutional constraint on self-determination” (Young 1990:37).⁴ Justice should refer not only to the allocation of material and non-material goods but also to “the social structure and institutional context that often help determine distributive patterns” or, in other words, to “issues of decisionmaking power and procedures, division of labor and culture” (Young 1990:15).

By focusing her attention on issues of decision-making power and procedures, division of labour and culture, Young highlights recurrent manifestations of domination and oppression, and uses them as the basis of her discussion. According to her it is indeed domination and oppression that bring about injustice within a social compact.

⁴ Although in most of her discussion Young subsumes the latter term into the former.

Young also argues that there is no unified concept of what the term oppression means. Moreover, not every group suffers the same kind of oppression. However, there are various identifiable aspects of it, which Young individuates as exploitation, marginalisation, powerlessness, cultural imperialism and violence.

In Young's view, oppression is both "a condition of groups" and a "structural concept" (1990:40). Oppression is a structural concept to the extent that it "designates the disadvantage and injustice some people suffer not because a tyrannical power coerces them, but because of the everyday practices of a well-intentioned liberal society" (Young 1990:41). Following Michel Foucault,⁵ Young is persuaded that it is perfectly conceivable to think of certain groups as being oppressed without necessarily ascribing a corresponding oppressive attitude to any of the other groups in society. Indeed, oppression reproduces itself in a myriad of situations, social institutions and people's unconscious assumptions about how the world is. Hence, trying to counteract its influence through the imposition of rules and laws is not as productive as it could be if oppression were the consequence of someone's deliberate choice, because oppression would continue to reproduce itself in the many aspects of people's lives.

Moreover, Young defines oppression as a characteristic of groups instead of individuals, to the extent that it is groups that "constitute individuals", rather than the contrary (1990:45). Oppression "happens to social groups" because "[w]hile groups do not exist apart from individuals, they are socially prior to individuals", in the sense that "people's identities are partly constituted by their group affinities" (Young 1990:9). In other words, it is the society at large and the groups within it that constitute individuals, rather than the contrary.

But what is a group? Young's definition of a social group is that of "a collective of persons differentiated from at least one other group by cultural forms, practices, or way of life" (1990:43). Thus what keeps individuals in a group are their common experiences, culture and way of life. But people identify themselves as belonging to one or more groups not because of this affinity. Rather, it is because they see that in their society other people exist with different practices and experiences from their own. Indeed in Young's view, "[g]roups are an expression of social relations", and "[g]roup identification arises...in the encounter and interaction between social collectivities that experience some differences in their way of life and forms of association, even if they also regard themselves as belonging to the same society" (1990:43). It is this sense of identification through the recognition of difference that defines a social group as

5 See Foucault 1991.

something which is not only an aggregate of people that possess a “set of shared attributes” (Young 1990:44). That is to say, while it might be true that people with a set of shared attributes generally belong to the same group, that happens mainly in virtue of the “social status” that those shared attributes bring about and the sense of identity among the people involved (Young 1990:44). Take, for instance, the case of gender groups. Young points out that within society the group of women and that of men are a consequence of the sexual division of labour. Not only female and male individuals display similar characteristics with those who belong to their same group, but in the course of their social life they also share a certain set of experiences with persons of the same sex rather than with those of the other.

On the one hand, then, it is not correct to treat groups as mere aggregates, or as “arbitrary classifications of individuals according to attributes which are external or accidental to their identities” (Young 1990:44). Indeed, the common attributes that certain people possess contribute to their identity both as individuals and as members of a particular group. On the other hand, it is equally incorrect to treat groups as associations, because group membership is not always voluntary. People are never detached from already existing social relations and it is often difficult for them to reason and feel independently from their group membership. However, Young maintains that group membership can be called into question by individuals. She does not deny that everyone “should be free to pursue life plans in their own way” (1990:47).

At the same time, Young is persuaded that the reality of groups should be acknowledged and positively affirmed. She recognises that group membership is often very important to people, even where that means being oppressed for such a membership. Moreover, she claims that “group differentiation is both an inevitable and a desirable aspect of modern social processes” and that social justice “requires not the melting away of differences, but institutions that promote reproduction of and respect for group differences without oppression” (Young 1990:47).

Young argues that the best way to positively assert and protect groups is to fully include them into the life of a polity, by respecting their specificities and listening to their voices. In order to do so, two institutional elements must be in place. First, it is necessary employ “a dual system of rights: a general system of rights which are the same for all, and a more specific system of group-conscious policies and rights” (Young 1990:174). For instance, women as workers should enjoy the same rights as men, but at the same time should be able to benefit from specific policies regulating pregnancy rights and maternity leave. Of course these same policies and rights would not apply to

men, since they are not the ones involved in childbirth (although they would still be endowed by corresponding parenting rights). Similarly, Young proposes that cultural minorities should be allowed to speak and develop their own first language by being granted the possibility to study it at school along with the official language of the state. Furthermore, ethnic traditions should not be wiped out in the name of assimilation into mainstream practices. Young thinks here about cases such as the situation of American Indians, whose independence is continuously under threat and whose needs have been ignored for generations.

Second, groups should be able to contribute to the formulation of those rights that are beneficial to the respect of their identities. Young claims that the only way to do so lies in group representation, which can be achieved on three levels. First of all, groups should be prompted to self-organise themselves, “so that they achieve collective empowerment and a reflective understanding of their collective experience and interests in the context of the society” (Young 1990:184). According to Young, this kind of associational activity plays a pivotal role as a means through which members of disadvantaged groups can form bonds among themselves, help each other and the group as a whole, raise group consciousness and fight against oppression.⁶ Secondly, groups should be able to formulate and propose policies that are taken in consideration during the decision-making processes. And thirdly, groups should retain veto power over those policies that specifically affect them, “such as reproductive rights policy for women, or land use policy for Indian reservations” (Young 1990:184).

The principle of specific group representation might also be seen, in itself, as a kind of special right. Indeed Young makes it clear that this principle applies only to “social groups, not interest groups or ideological groups” (1990:186). In other words, it does not extend to those groups composed of people who share an interest in the realisation of the same aim or policy, nor to those who have common political views. The principle of group representation is meant to protect and empower those groups characterised by a certain social situation, or position within a society. Besides, only disadvantaged and oppressed groups are entitled to special representation. That is to say, only those who experience one or more aspects of oppression (exploitation, marginalisation, powerlessness, cultural imperialism and violence) should be granted the possibility to be specifically represented in public debates and decisions not only in government institutions, but on every level of the social compact.

⁶ See Young 2000, esp. pp. 164-167.

2. Implications of the view: justice as impartiality and group specific rights

Young's theory of a "politics of difference" is critical towards the adoption of a policy of equal treatment for every group within a society, but it does so only insofar as this equality is intended as assimilation and exclusion of diversity. In other words, Young challenges the conception of equality as sameness, rather than of equality as such. After all, she defines social equality as one of the goals of social justice, provided that the equality in question be intended not only as the distribution of riches and goods but also as "the full participation and inclusion of everyone in a society's major institutions, and the socially supported substantive opportunity for all to develop and exercise their capacities and realize their choices" (Young 1990:173).

Young argues that "[j]ustice should refer not only to distribution, but also to the institutional conditions necessary for the development and exercise of individual capacities and collective communication and cooperation" (1990:39). By contrast, injustice refers to patterns of oppression and domination, which in turn have an influence on the division of labour, culture, and decision-making procedures within a social compact. Young does not intend to challenge the idea that distributive concerns should play a pivotal role in a system of justice, but wishes to highlight that these concerns alone are inadequate to make sense of the social context of human relations. In other words, Young holds both a conception of justice as self-determination and as self-development.⁷ The element of self-determination can be explained by referring to Philip Pettit's account of freedom as non-domination.⁸ According to Pettit, a person or a group are free only when they are not subjected to any form of arbitrary interference in the realisation of their actions. Thus, a polity should not put institutional constraints on people's pursuing their own way of life, in order to be just. The element of self-development can be linked to Amartya Sen's and Martha C. Nussbaum's formulations of the capability approach.⁹ In this approach, all persons should be granted the possibility not only to satisfy basic material needs, but also to develop their intellectual capacities, and to flourish both socially and as individuals. Thus, a polity should not put constraints on people's personal and collective development, in order to be just.

In Young's view, social justice can only be achieved under democratic conditions, where everyone is able to take part in public discussions and decision-making processes. As in Barry's theory, justice implies that many different perspectives

⁷ See Young 2000, esp. pp. 31-33.

⁸ See Pettit 1997.

⁹ See Sen 1992 and Nussbaum 2000.

be heard and pondered. But unlike Barry, Young is not primarily concerned with the intrinsic fairness of the decision-making process: she is also interested in the production of just outcomes. According to her, the ends to which any deliberation are “a fair distribution of resources, just rules of cooperation, the best and most just division of labor and definition of social positions” (Young 1990:93). An exclusive interest in procedural fairness does not, in itself, guarantee that the system is functioning fairly and equitably.

Understandably, the interest in just outcomes in addition to just procedures is not the only element that differentiates Young's from Barry's theory. Indeed, while in the latter justice is intended as impartiality, in the former justice is understood as the recognition and empowering of difference. In Young's view, while impartiality seeks the detachment from any particular situation, conceptions of the good and group membership included, it fails to address the way these important aspects function in people's lives. Impartiality promotes unity or identity over particularity and difference and claims to give the same weight to every perspective, but at the same time it relegates “the concrete interests, needs, and desires of persons and the feelings that differentiate them from one another” in a “private” and “subjective” sphere, as opposed to the universal and impersonal one to which impartiality applies (Young 1990:103). But while claiming to rest on an account of universal reason, impartiality fosters the interests of the dominant groups, and excludes from full citizenship “persons associated with the body and feeling”, such as women and ethnic minorities (Young 1990:97).

In Young's view, it is preposterous to expect people to act impartially in moral matters. It is impossible for a person to discuss political issues without any prior knowledge of them, derived from one's own experience and social context. Similarly, it is unthinkable to step in someone else's shoes and perfectly empathise with her situation and point of view. Besides, a political discussion presupposes a concern for the outcomes on the part of the persons involved, instead of just an interest for the procedural fairness. Thus Rawls's formulation of an original position and of the veil of ignorance are inadequate to make sense of the way in which moral judgements are arrived at, and so is Barry's focus on fair processes rather than just results.

Young is persuaded that an alternative to impartiality can be found not in the selfish attachment to one's own interests, but rather in a model of “communicative ethics” in which moral rationality is understood as “dialogic, the product of the interaction of a plurality of subjects under conditions of equal power that do not suppress the interests of any” (1990:106). While impartiality requires the detached and

dispassionate intervention of a neutral figure to settle matters of public interests and thus gives a great authority to bureaucratic entities, the kind of participatory democracy proposed by the politics of difference “promote[s] the ideal of a heterogeneous public, in which persons stand forth with their differences acknowledged and respected...by others”, and every particular perspective is listened to (Young 1990:119). In Young's view, only this kind of “deliberative model” of democracy is able to promote inclusion, political equality, reasonableness and publicity (2000:21-25).

In the politics of difference, the public and the private sphere are not separate nor separable entities, in the sense that “no social practices or activities should be excluded as improper subjects for public discussion, expression, or collective choice” (Young 1990:120). There is no universal, homogeneous form of citizenship that acts as a norm against which all differences must be measured, or regarded as deviations. Gender, sexual orientation, race and so on are not considered as characteristics which bear no consequence for people's civic status. On the contrary, these characteristics play a pivotal role in the definition of one's rights. Indeed, Young argues that “social policy should sometimes accord special treatment to groups”, especially to the most oppressed ones, and it should guarantee to them a fair political representation in order to promote their inclusion and participation (1990:158). Young is persuaded that what most groups wish for themselves is to affirm their difference rather than being assimilated into the mainstream culture. That is to say, these groups want to assert their diversity and positive contribution to the broader society. For instance, many gay and lesbian people desire that their sexuality be not simply tolerated, but recognised as a valid alternative to heterosexual practices. Similarly, many women do not aspire to eliminate gender differences, but rather wish to see that their female specificity be affirmed and valued for what it is. This is why, for Young, policies that flow from principles of impartiality and sameness are not an antidote against inequality; on the contrary, they foster inequality and oppression within a society.

Equal participation in the democratic decision-making processes is seen by Young as the antidote to inequality within a society. Similarly, Barry stresses the importance to accord to every perspective the same weight, and to grant to everyone the right to be heard in public discussions. Moreover, both Young and Barry postulate that all the parties involved in a deliberation should be granted veto power over all resolutions that they find contrary to their interests or even harmful for themselves. There are, however, two major differences between the kind of participatory practice proposed by Barry and that proposed by Young. While the former never specifies which

type of entities are the parties involved in a decision (individuals, groups, political formations etc.), the latter is very clear about the fact that they must be social groups and their representatives. Moreover, while Barry is contrary to allowing special rights – or, as he would say, “privileges” – to people just in virtue of their group membership, Young advocates the endorsement of a double system of rights. What she says is, in other words, that everyone should be granted a certain set of democratic rights that should be the same for all. But at the same time, oppressed groups should also be endowed with a more specific set of rights, carefully designed to protect their difference and empower their capacity to take part in the public life without being disadvantaged by their condition. Of these rights, specific representation seems to be the fundamental one, from which every other special right flows.

Barry's objection to a policy that assigns special rights or privileges to some groups in virtue of their difference is that such a policy might not be easily endorsed by those who would not benefit from it. As he puts it, “principles of justice are inconsistent with any claims to special privilege based on grounds that cannot be made freely acceptable to others” (Barry 1995:7-8). Someone might argue that assigning group specific rights runs counter to principles of equality and fosters resentment among those who do not partake in such rights. It must be noted, however, that the kind of group-based rights proposed by Young are not meant to bring privileges to their holders. They can be termed “special” only in the sense that they are specific, and their specificity derives from the fact that they target disadvantaged and oppressed groups. In other words, specific rights are designed to foster equality rather than to disrupt it. Rejecting the application of such rights is, indeed, contrary to principles of equality, for it would hinder certain groups to reach that level of fair treatment that is the basis of democratic societies. Moreover, special rights for some people are not meant to go against other people's universal rights. That is to say, granting specific rights to disadvantaged groups does not pose a threat to other groups' enjoyment of their rights. Hence no one should reasonably foster resentment or envy towards special rights bearers.

An advocate of justice as impartiality might still wonder what relation should exist between the general and the specific sets of rights in question. In other words, it might be asked whether (especially in cases of conflict between common and special rights) one of the two sets would overpower the other, or whether both of them would be equally important. There might be three situations here. A first situation would be one in which general rights are considered prior and paramount to specific rights. In cases of conflict between the two, then, the claims of the former would have the upper

hand over the latter. A second situation would be one in which special rights are more influential than common rights. In cases of clashes between the two, group specific claims would win over the general application of the same rights for all. A third situation would be one in which both group-specific and universal rights bear the same weight. In cases of conflict, none of them would prevail over the other *a priori*. We could imagine, then, that deciding in favour of one or the other would be a matter of specific considerations relevant to the particular case in question.

Young's theory of the dual system of rights does not specify in which sense the relation between general and special rights should be interpreted. However, it might be argued that a polity in which group considerations had the better of general equality would be doomed to conflict and division, rather than cohesion and collective well-being. That is to say, in Young's account difference is never valued *per se*, or for the sake of difference itself, but for the good influence that it has on human flourishing within societies. Thus it is unlikely that, even in the context of a politics of difference, group demands would interfere with the needs of the general public.

Two options then remain: universal rights are stronger than group rights, or the two are equally weighted in policy considerations. But, although it makes sense to think that the prevalence of one set over the other is a matter of specific application in every case to solve, it is difficult to see how conflicts between the two could be dealt with if they were to be considered as perfectly equal in weight. This might be true if some special right were against the general interest of a polity. Imagine a group who is enjoying financial privileges, be they due to historical agreements, geographical position, religious motivations etc., in a country hit by an economic crisis or an unexpected shortage of resources. Would it be fair to let this group retain its privileges, when its contribution to the general wealth would be beneficial to the whole social compact? Young maintains that groups must have veto power over policies that will affect them. This would mean that the group in question would have the power to oppose a withdrawal of its previous privileges. However, we should not forget that special rights are designed to empower disadvantaged groups in order to render them equal to the others, and to enjoy a full participation in a system of justice by preserving their differences instead of reducing them to sameness. Special rights are not designed, in other words, to elevate group interests over those of a community of people. In fact, Young herself would not recognise these kind of entitlements as special rights aimed at the protection of group specificities. On the contrary, she would regard such financial privileges as unfair for the general public, and as oppressive towards the members of

other social groups. It is Young's belief that a group would be entitled to a special treatment if and only if that group were dominated over, or exploited, and only in order to relieve it of its unfair burden of oppression.

Specific rights can only function when a system of universal rights of equality and respect is in place. As Young herself recognises, we are able to talk now about group specific policies because we have reached a political situation in which, at least formally, nobody is treated as an inferior being and everyone enjoys a minimum level of protection from democratic institutions. Therefore, notwithstanding the importance of giving adequate weight to the claims of the oppressed ones, and to grant them a treatment that is appropriate to their needs, we must not forget that equality is still the goal to which a system of justice should aim.

Because universal equality rights are regarded even by Young as the basis on which specific rights need to be built, a proponent of justice as impartiality might still argue that enforcing existing rights of equality and respect would be a better solution towards ending oppression than the adoption of a dual system of rights. One might think, indeed, that the liberal paradigm of justice has already in itself the means of ending discrimination and domination within a society. Instead of considering differences as a secondary concern for justice, liberals could simply be more attentive to them and adjust political and social institutions to the demands of different groups within the social compact. This does not rule out the possibility that a polity may recur to special rights for disadvantaged groups, but somehow it reshapes their full scope and occurrence. Young defends her claim that specific rights are needed by appealing to the necessity to give pregnancy and maternity leave rights to women, to grant to minorities the possibility to learn and use their own language, and to allow indigenous groups to have control over decisions regarding the land in which they live. But, on a closer examination, only the first example would fit in the category of "special rights". Women do need a specific recognition and positive assertion of their nature as birth-givers: this certainly means designing special policies regulating not only the situation of pregnant women in the workplace, maternity leaves, and the needs of new mothers, but also abortion rights, and physical and mental health services that deal specifically with women's issues. However, it would not be necessary to design a special policy to grant a specific minority the possibility to speak their own language, if rules supporting the learning of different languages at school were in place for everybody to enjoy. Similarly, it would not be necessary to establish a special right of land management for a particular indigenous group, if there were a general (and enforced) rule that protected people

residing in a place from being ignored where matters related to the use of their land is concerned.

This solution, however, would not be a satisfactory one for Young. Without special rights, the specificity of disadvantaged groups would be ignored, and this would result in their continued oppression. American Indians need to have control over their land precisely because they are American Indians, since they suffer a very specific form of exploitation which is not experienced by other groups in the American society. The same discourse applies to certain linguistic groups, that need to have their language taught at school in order for their members to avoid marginalisation or to disappear altogether. Extending special rights to all would mean the end of special rights as such, and the return to an undifferentiated form of citizenship in which oppressed groups would stand to lose, and in which diversity is not respected nor allowed to flourish.

3. Limitations of the view

As we have seen, Young points out that the liberal theory, especially in its formulation of justice as impartiality, suffers from some limitations and can be challenged by a supporter of the politics of difference. However, Young's theory is subjected to limitations as well, and some objections can be raised against it.

A first objection one might raise against Young's formulation of the politics of difference concerns her conception of oppression as a structural concept, and more precisely her view that “[t]he systemic character of oppression implies that an oppressed group need not have a correlate oppressing group” (1990:41). Young does not explicitly deny that there might be people who oppress others knowingly, but her focus is rather on structures of power that pervade our society without any particular awareness of them among the agents involved. However, one might maintain that there are patterns of oppression that result from everyday practices and the societal structure at the same time that some groups deliberately act in an oppressive way towards others. Besides, practices within a society are heavily influenced by who the powerful in that society are, groups included. Young concedes that individuals might “intentionally harm others in oppressed groups” (1990:42), but she does not specify whether certain groups might intentionally harm others, and how. In other words, in Young's discussion domination is considered something that happens even in democratic societies where groups do not engage intentionally in oppressive acts towards others. But one might wonder whether it could not also be the case that certain groups knowingly promote patterns of domination

that are advantageous for themselves. If that is the case, group representation and special rights more broadly could be difficult to implement, because the dominant group would hinder attempts made by disadvantaged groups to improve their situation.

A second objection that might be raised against Young's theory is related to her definition of group identity. Young seems to maintain that people recognise themselves as belonging to a certain group both in virtue of an affinity that they feel for other members in the same group, and also because they find other groups within their society that are different from them. In other words, "group" is a relational concept rather than an essentialist one: a group exists only in relation to at least another group within a social compact. Members of a group share a certain set of characteristics that render them similar to their fellow group members and different from people belonging to other groups. However, one might argue that some groups are constituted by people who may not share much in common apart from physical characteristics. For instance, people may be part of the same group because of the colour of their skin while living in different countries, speaking a different language, following different practices and believing in a different religion. To this objection, Young would argue that a group founded simply on the colour of one's skin is in fact not a group, because to be counted as members of a group it is not sufficient to share only "attributes which are external to or accidental to" one's identity, but also "cultural forms, social situation, and history" (1990:44). But it is not clear what "external" and "accidental" mean in this context. External and accidental attributes might or might not be an integral part of a person's identity. For instance, being a single mother is a characteristic that some women might find "accidental" to the definition of who they are as individuals, while others might consider this circumstance as one that has rendered them the persons they are and that is therefore inseparable from their identity.

Besides, there might be several ways in which members of a group come to share certain characteristics. The first case is that of someone who recognises herself in a certain group's identity. We could think about nationality in this way. For instance, someone might regard her nationality as something that plays a pivotal role in the definition of her individual identity. She might find herself and fellow nationals as sharing certain habits, desires and traditions and feel that they play a fundamental part in the definition of herself as the person she is. By contrast, someone else might consider her nationality as something that was only assigned to her arbitrarily and to which she does not feel a strong connection. She might not share any habit, desire or tradition with other people of her same nationality or feel that, even when she does, that

happens only by chance and not because of a common background.

The second case of group identification is twofold. On the one hand, one might be included in a certain group because the members of that group recognise her as one of them. On the other hand, one might be indicated as belonging a certain group by others who are not themselves members of that group. This is the case of some groups' culture, social situation and history that have been determined by attributes which originally were only externally or accidentally shared, in the sense that might have been intended by Young. Think for instance of the case of Black Americans, whose African ancestors originated from different tribes and belonged to different places, but were treated as if they simply belonged to the same group, i.e. "slaves", by their White owners. Then those who had been labelled as belonging to the group "slaves" started to share a common culture, history, and social situation. Soon after they begun to be recognised by other members of the same group as a part of it.

It must be noted, however, that the line that divides the case of self-identification from that of identification by others is much more blurred than how it might appear at a first glance. Take the examples considered before. A member of a certain nation might be regarded by others as belonging to that nation independently from the fact that she recognises herself or not as a member of that same nation too. A Black person in the U.S. might consider herself as an American national that has nothing to do with Black culture and that is not regarded by other Black people as one of them, but nonetheless be treated as a member of the Black community by other non-Black Americans, and so on.

Hence it might be argued that people stand in relations to their groups in many different ways that are not immediately captured by Young's description. An individual may be in a group for different reasons: she could belong to it by choice, or by birth. She may be in a group for the duration of her whole life, or just during a certain period of it. Furthermore, an individual may self-identify with a group, or be identified by others as belonging to that group. Thus what Young's theory needs is an adequate concept of group identity that is able to account for the many ways in which an individual may acquire group membership. Without such a concept it might be difficult to determine whether specific individuals belong to a certain group, or not. Moreover, without an accurate definition of group membership that takes into account salient characteristics of its affiliates, it might be problematic to establish when members of a group are oppressed, or in which aspects of their lives they are experiencing domination, and how to solve the situation through policy.

A third objection that might be raised against Young's approach concerns, again, policy. She affirms that groups should organise themselves, be granted a fair representation, and take part in democratic decision-making processes. However, we must not forget that Young herself admits that she has been prompted to write her book by thinking about “group-based social movements” such as “feminism, Black liberation, American Indian movements, and gay and lesbian liberation” and the challenges that they pose to the current system of justice (1990:3). All these movements were constituted and organised by people on the basis of a voluntary choice they made, but flow from broader groups where membership is based on shared attributes rather than a more specific cultural affinity. Young then should clarify whether the kind of policy she is proposing is able to deal not only with groups organised in movements in which members recognise themselves as sharing a common experience, but also with less structured and internally homogeneous groups. This distinction is important not only on a theoretical level, but furthermore it could have consequences for the kind of participatory and group specific rights that a polity should promote.

A fourth objection, or limitation, that Young's theory faces is that by consenting groups to exercise veto power over the approval of those policies that affect them directly we might risk situations in which it is very difficult to find a compromise between the demands of the majority and those of the specific group in question. For instance, a group retaining veto power over decisions regarding the land it inhabits might oppose the use of that land for the construction of infrastructures or factories that could benefit the community as a whole. When such an agreement between the parties is not reached, nothing could be done, and the decision-making process would produce no result, or would shift towards more costly options.

Finally, one might raise doubts about the fact that, even admitting that disadvantaged groups be guaranteed a specific treatment and special representation, the task of deciding which groups deserve special rights would still be in the hands of the majority, or the privileged ones. Thus, the possibility to counteract domination would rest on the good disposition of the dominating groups, rather than in the disadvantaged groups themselves. These groups could see efforts towards ending their oppression frustrated by lack of recognition and support. Besides, there would still remain practical issues to solve, such as which groups should be counted as requiring special representation, and how to implement adequate policies in existing societies.

I shall deal with these objections in the next section.

4. Response to the limitations

To answer to the first objection, namely Young's idea that oppression works through the structure and practices of a society instead of being the result of some oppressors' intentional acts, we might concede that what she says is true for most of the disadvantaged groups in many societies. Suffice to say, discourses about the politics of difference presuppose that the state in which they are to be implemented is not an authoritarian one. Obviously, many people in the world continue to live under tyrannical or extremely unfair political conditions. In those cases it makes sense to think of a powerful elite holding control over resources and privileges at the expenses of others. Nonetheless, the same discourse does not apply for the most privileged groups in contemporary democracies. In a democratic setting, it is not necessary to say that, for instance, men as a group oppress women (as a group) intentionally. Many men are unaware that women are indeed oppressed, or just do not care about it. They might not even realise that through their behaviour they are perpetuating domination over women. We can imagine that at least some men are well aware of the situation and want to keep it that way. But what Young wishes to highlight is the fact that oppression need not be intentional, nor does it need an identifiable oppressor, to be in place. That is to say, it is sufficient to have an oppressed group in order to have oppression. As for the others, most of the time they are just benefiting from inequality. Indeed Young makes clear that generally "specific groups are beneficiaries of the oppression of other groups, and thus have an interest in their continued oppression" or, in other words, "for every oppressed group there is a group that is *privileged* in relation to that group" (1990:42).

Turning now to the second objection against Young's blurred definition of group membership, we can say that she herself points out that "in a large, complex, and highly differentiated society, social groups are not themselves homogeneous" (1990:48). She seems to hold that the definition of group membership is always shifting from time to time and in relation to the other groups within a society. On the one hand, members of a group self-identify themselves as belonging to that group. On the other hand, people are identified as belonging to a group because of the fact that others, outside that group, define them as members of it.

The reason why Young is not more specific about group identities is because she does not want to ascribe to groups any essential nature. Groups exist in relation to other groups. A group that were completely isolated from the rest of the world would think of itself simply as the only people that there is. It is only when a group meets another

group that it starts to recognise itself as different. Furthermore, Young wants to make clear that there is not a single nature that all members of a certain group share. People are constituted by the social relations in which they find themselves to be, which include group experiences. Every individual can be a member of multiple groups, can have interests and feelings completely alien to that of other members of the same group(s), and to a certain extent can also renounce to her group membership. That is to say, people within a group may and should retain their particularity as individuals and find a personal meaning in that group membership for themselves.

As noted above, it is undeniable that Young's model pertains to groups which are already self-conscious of their peculiarities or are organised into movements. In her view, what these groups wish is to see their differences publicly affirmed. Young supports this claim by appealing to the empirical evidence of gay, lesbian and women's movements. However, as stated in the third objection, these movements are not wholly representative of the groups from which they originate. Not every gay man, lesbian or heterosexual woman would agree that stressing their irreducible diversity is the right way to obtain civil rights and social recognition. Young herself acknowledges that appealing to a purported different nature might even be counterproductive, for it would assign peculiar characteristics to those people who do not believe that their sexual orientation or their gender come with a set of many other “innate” characteristics.

One might conclude, then, that the kind of policy based on self-organisation and representation that Young is proposing would mainly work for those groups in which members recognise themselves as having cultural affinity and shared aims, and that are able and willing to organise themselves. In other words, this policy may be apt for movements such as those considered before but not for every group living within a society. However, this conclusion would be wrong. As stated in the first section, Young wishes to see the situation of disadvantaged social groups improved by the implementation of special rights and group representation. To be counted as “social”, a group must be “a collective of people who have affinity with one another because of a set of practices or way of life” and is “differentiated by at least one other group according to these cultural forms” (Young 1990:186). But movements are not social groups; rather, they might be considered as interest groups (in that their members seek the realisation of the same aims) or ideological groups (in that their members share common opinions and point of view). So we must maintain that Young's interest is not confined to movements: what she does, indeed, is to take movements as a model of what every group could be in terms of self-consciousness and self-organisation.

Nonetheless, it remains true that lack of self-organisation can be a consequence of the fact that the group in question is composed by people who share some attributes but do not partake of the same cultural context and practices. In this case, self-organisation would be rendered difficult by the very fact that the members of that group are not moved by the same desires and do not strive for a common aim. For instance, different women might see their oppression in a different way and believe that it could be overcome by different means. Furthermore, there might be people who are not yet conscious of being oppressed. This is especially true when they are oppressed in certain aspects of their lives but not in others, and thus lack a cognition of themselves as exploited and dominated. For instance, a woman with a bright career and a fulfilling family life might refuse to consider herself as oppressed *qua* woman. Similarly, a wealthy white man (that is, the kind of person that Young would consider as belonging to a privileged group) might find that his being gay does not represent an obstacle in his life, and might even argue that gay people are not as oppressed as they appear to be. When a group is unable to organise itself, when its members do not share a common aim or way of life, when the people belonging to it do not recognise themselves as oppressed, then the positive assertion of its reality by some of them is not sufficient to put an end to the discrimination that is perpetuated against it.

The difficulty in finding even a minimum consensus for a group's self-organisation can be problematic when it comes to issues of representation. Young suggests group representation and participation in decision-making processes as the best way to end social oppression. But how could a group find suitable representatives when its members are so varied or unable to find a common ground to fight for? Additionally, how can the general public be sure that what group representatives are asking for is really in the interest of the whole group, and not just of a part of it? Young herself recognises that perfectly homogeneous groups do not exist, since a person's identity is not exhausted by her group membership. Indeed, Young points out that members of a group may have different interests and opinions; nonetheless, they share the same "perspective", which derives from their social positioning in that group (2000:136). What representatives of a group bring into the public debate, then, is the perspective of people similarly positioned to them: their knowledge, experiences, and point of view on social practices. In other words, "[p]erspective is a way of looking at social processes without determining what one sees", and people who partake in the same perspective "nevertheless often have different interests or opinions, because they reason differently from what they experience, or have different goals and projects" (Young 2000:137).

Turning now to the fourth objection to Young's theory, we can see that the problems posed by granting veto power to one or more parties involved in a decision do not affect her approach exclusively. In fact, we find the recourse to vetoing in Barry's approach as well, which in turn is based on Scanlon's formulation of the reasonable agreement. In addition, both Scanlon and Barry postulate that all the parties involved should be granted veto power over the resolutions proposed throughout the course of the decision-making process. By contrast, Young seems to consider vetoing as a special right that the polity should concede to an oppressed social group, as long as the policy under discussion affects the group in question. In other words, veto power goes hand in hand with special representation of the oppressed. Young recognises that including under-represented groups in the decision-making process could foster animated debates about the issues under consideration, but she welcomes it as a sign of a healthy democratic participation. Besides, she clearly states that "[i]f...the alternative to stalled decisionmaking is a unified public that makes decisions ostensibly embodying the general interest which systematically ignore, suppress, or conflict with the interests of particular groups, then stalled decisionmaking may sometimes be just" (Young 1990:189). In other words, giving a voice to the disadvantaged is better than ignoring them. Hence, risking stagnation by permitting oppressed groups to block those decisions that negatively affect them is also better than imposing policies on people who already suffer from domination. Besides, Young argues, these cases would not be the norm: groups might reason from a different perspective, but their interests are often compatible and a compromise is possible. A group opposing the use of its land might have good reasons to do so, and by being adequately represented in public debates it could expose them to the others, so that they might come to see the issue under a different light and be prompted to find a different route to satisfy both the majority's and the minority's demands.

Finally, Young admits that the adoption of principles of specific representation and special rights might be difficult to get started. The general public needs to accept the validity of such principles first, then it must decide which groups qualify for the rights in question, and how to secure their representation effectively. However, Young argues that these practical issues are not a hindrance to the politics of difference more so than they are for any other political proposal. That is to say, questions of implementation will affect any proposed policy, but that does not mean that such a proposal is unfeasible, or that it is not well grounded on a theoretical level.

A supporter of the politics of difference might defend it by pointing out that

Young herself recognises that her theory is subjected to some limitations. The politics of difference, in other words, does not claim to be able to solve every group-based issue within a society nor does it ignore that some obstacles might be encountered should a polity try to put this approach in practice. But while the issues just considered might be regarded simply as limitations, there is an ulterior problem that seems to remain unresolved in Young's theory, and that could be seen as a serious objection to her approach.

I shall touch upon this problem in the next section.

5. A new problem: individual autonomy

Young claims that positively asserting group differences can be a tool for challenging unequal practices and changing them by means of group representation and self-organisation. But because oppression is, according to Young, such a pervasive feature of our society we might think that it may affect not only groups within a social compact, but also individuals within groups. Thus one might argue that a group-based policy would be ineffective as a means to end some important forms of oppression and domination.

Young's main concern is how to solve clashes and issues of inequality between groups rather than within them. Indeed, by focusing so much on groups she seems to forget the individuals. The reason why she does this is that she believes that individuals cannot exist outside of a group: it is the groups that form individuals, not the other way around. This argument, which she derives from Martin Heidegger,¹⁰ has strength in that it recognises the importance of the social situation in which an individual finds herself to be, instead of just theorising persons as entities independent from any context. However, problems arise when, for instance, a group's religious beliefs or practices justify the oppression of some members of the group itself. This issue is the object of much of Chambers's criticism of Young's politics of group difference. In particular, Chambers claims that if "*group* autonomy is meant to be distinguished from *individual* autonomy, so that Young wants to allow groups to determine their own affairs and the condition of their members immune from liberal state interference, then it runs counter to liberal accounts of equality and justice" (2008:105). Chambers's concern is that many groups, especially religious ones, may use the autonomy that the social compact grants to them to adopt an oppressive stance towards their members. They would then justify

10 See Heidegger 1996.

this behaviour by appealing to the necessity of preserving the group's cultural practices and identity. Thus we might end up having perfectly autonomous groups which are oppressive towards their members, or some of them, usually women.

Young would probably answer that she does not deny that a common set of rights should be maintained even by a state willing to adopt a policy of difference. These rights would, among other things, protect individual autonomy, freedom and equality. But, as seen before, her stance towards the relation between group-based and universal rights remains problematic. Thus we might find it difficult to elaborate a kind of policy within the boundaries of the politics of difference that respects group identity while at the same time securing equality and autonomy to the individuals who belong to it.

6. Conclusions

In this chapter, I have analysed Young's proposal of a politics of difference, as opposed to the theory of justice as impartiality. In this approach, the end to which justice should aim remains equality, but the means proposed to reach it are completely different from that employed by impartial justice.

Young believes that political discourses should be concerned with oppression rather than with unfair distribution of resources. In her view, social practices determine the oppressed status of some groups. Members are prevented from flourishing as individuals and their differences are ignored by the political discourse, in a way that perpetuates domination against these groups.

To put an end to these recurring patterns of inequality, Young proposes that groups be allowed to self-organise and to be granted a fair participation in public decision-making processes. Moreover, she claims that a dual set of rights should be designed: one set would apply to everyone in a society in the same way, while the other would be based on group differences and needs.

There are, however, some objections against, or limitations to, Young's theory. The first one is that oppression can be a matter of intentional domination instead of just the result of every-day life practices. The second is that it remains unclear which elements define a person as a member of a certain group. The third objection raises some issues about policy, since the movements to which Young appeals might not be representative of the groups from which they flow. A fourth limitation regards the possibility that granting veto power to certain groups may lead to stagnation in the

decision-making process. Finally, it might be difficult to implement a politics of difference effectively in existing societies.

To these objections, Young would answer that although oppression happens at the structural level of a society, there are still groups that benefit from it. Moreover, she would say that the definition of membership remains relational, and thus necessarily changeable. As for representation, it is undeniable that what Young has in mind as a model are movements, but her interest lies in social groups and in the way in which they can organise and represent themselves publicly, in the same way as movements do. She also argues in favour of the inclusion of the disadvantaged ones in public debates, and claims that even stalled decision-making is better than disrespect towards oppressed groups' needs. Finally, she points out that problems of practical feasibility are common to every political proposal, but that nonetheless they are not in themselves a refutation of the validity of such proposals.

This last concern about policy leaves us with an ulterior question that seems to remain unaddressed in Young's work. This question raises some issues related to autonomy and freedom from oppression for the individuals within a group.

I shall deal with these concerns in the next chapter.

Chapter 3

Individual Autonomy and the Liberal State

1. What the view is

After having analysed Barry's theory of justice as impartiality and Young's formulation of a politics of difference, we can now turn to Chambers's approach. All the aforementioned authors can be defined as egalitarian liberals, for they agree that the goal of justice is equality among the citizens of a polity. However, they disagree on the means through which such equality should be promoted. As we have seen, Barry proposes that every individual and group within a society be treated impartially: no one should legitimately ask a privileged treatment for herself in virtue of her group membership, and reasonable debates where everyone is listened to should be the basis of any public decision. Moreover, Barry is persuaded that it is possible (and desirable) for a state to maintain a neutral attitude towards competing conceptions of the good, and to allow people to choose their own ends and pursue them as long as this does not hinder other people's ability to do the same. By contrast, Young claims that oppressed and dominated groups should be granted group-based rights, among which the most important is a right of special representation in the decision-making process, in order to remedy their disadvantaged situation. In Young's view, we cannot expect a state to be perfectly neutral towards every conception of the good and, moreover, we should become more aware of how oppression pervades the structure of our societies, through every-day practices and cultural norms.

Finally, Chambers combines Barry's concern about giving to every individual the same freedoms and rights with Young's awareness of social influence and the consequences it has for group-related forms of oppression. In particular, she is highly critical of what is, according to her, the liberal tendency to "support and protect people's freedom to make harmful choices that threaten their well-being or their equality, rather than protecting their freedom to resist inequality and supporting them in doing so" (Chambers 2008:4). Nonetheless, she maintains that liberal values such as freedom and autonomy can promote human well-being and equality. In order to do so, however, liberalism needs to follow feminism in recognising the importance of social construction in socio-political discourses. Indeed Chambers is persuaded that in liberal

theories “the greater the weight given to choice, the less the attention paid to social construction”, that is, the less the reasons behind choices are analysed and understood (2008:8).

Chambers endorses Foucault's theory of social construction,¹¹ according to which an agent's choices are never independent from the context of power in which they are formulated and from the agent's social position. In Chambers's view, “Foucault's work highlights three problems with the liberal focus on choice. First, because choice is individual, liberalism's focus on choice marginalizes its social location in culture. Second, because choice is mental, liberalism's focus on choice marginalizes the role of physical embodiment. Third, because liberalism conceives of choice as the absence of (state) constraint, liberalism's focus on choice ignores the creative elements of power” (2008:21). Indeed, one of Foucault's main insights has been that power, in addition to having a repressive force, also possesses a creative capacity, which acts more efficiently than repression. This means that, by directing their attention to the repressive force of power, liberals run the risk of overlooking its creative capacity, namely the most effective form in which power can operate.

Power is creative when it is exercised in everyday social situations and practices. As a consequence, those who are subjected to it come to internalise their condition and become unaware of the forces that drive their choices and actions. Habits, customs and cultural norms are all creative expressions of power, to which people tend to conform. Hence power is not only something that is imposed on an agent externally, but also a set of internalised preferences and social expectations that are continuously reinforced by the agent's choices and attitude. In the same way as a person subject to surveillance (or to the threat of it) is lead to keep her actions in check in order to avoid punishment, people react to social pressure by adapting their attitudes and behaviour to the canon dictated by the current norms of social interaction. This phenomenon of adaptation, Chambers argues, is most evident in gendered practices related to posture, clothing, care of the body, physical appearance, fitness and female beauty. Therefore, “[w]e do not have to be acting under the commands of a dictator to be acting in response to power”, for “[i]n our everyday lives, we encounter a host of factors that encourage us to act in certain ways, to form our bodies in certain ways,...to want certain things” and to make certain choices (Chambers 2008:28-29). Thus, every time that a person expresses a preference or takes a decision, she is under the influence of various social factors, even when she acts uncoerced. If this is the case, then “there is no longer any distinction

11 See Foucault 1991 and 1998.

between a so-called free choice and a pleasure-endowed internalized norm” (Chambers 2008:30), although we can maintain that “some pleasure-endowed internalized norms are better than others” (2008:33).

The best way to understand how cultural norms are formed is to adopt a genealogical method. This means recognising that “changes in practices and norms indicate shifts in patterns of domination” (Chambers 2008:33). Again, what is primarily affected by these patterns of domination is the body. To illustrate the point, Chambers takes as examples practices of surgical modification such as female genital mutilation (FGM), routine secular circumcision (RSC) and breast implants. In her view, the persistence of these practices is determined by the cultural meaning attached to them, such as beauty and social status. Moreover, these practices tend to be justified as medically advanced and beneficial, even when there is no evidence (or, for FGM, even when there is contrary evidence) that this is the case. In Foucault's view power can never be separated from knowledge. Thus the legitimacy of RCS continues to be defended in virtue of its supposed efficacy in preventing sexually transmitted diseases and cancer. Similarly, the practice of FGM is supported by various beliefs on its presumed benefits related to health and hygiene, even though they have been proven wrong by contemporary medicine. Besides, “once a certain knowledge is in place, it has normative implications” and can be used as a tool for power (Chambers 2008:42). By being told that RCS or FGM represent a health improvement for those subjected to it and for their sexual partners, people are led to think that undergoing these practices is not only sensible, but also morally required. Similarly, “[t]he discovery of AIDS...prompted a shift in sexual morality, one in which promiscuity, casual sex, and homosexual sex were (re-)cast as immoral in certain discourses” (Chambers 2008:42).

Foucault's genealogical method enables us to see what is problematic with the liberal view of individual freedom. According to Chambers, “[b]y reducing questions of justice to questions of choice, liberals effectively deny the importance of culture to practice, the importance of power in perpetuating practices, and the role that practices play in perpetuating regimes of power/knowledge” (2008:42-43). When focusing on choices liberals underestimate the extent to which such choices are influenced by the social context in which they are made. That is to say, it is not sufficient for a choice to be uncoerced to be regarded as free and autonomously made.

2. Implications of the view

In order to analyse the extent to which choices may be said to be autonomous, Chambers distinguishes between two kinds of autonomy, namely first-order and second-order autonomy. According to her, the latter “applies to the manner in which an individual comes to have a particular way of life or comprehensive conception of the good” (Chambers 2008:162). That is to say, second-order autonomy is realised when a person is able to choose her own ends without external coercion or influence. By contrast, first-order autonomy “applies to one's attitude to the rules and norms that are part of a way of life” (Chambers 2008:162). This kind of autonomy is realised when a person adopts a critical stance towards those practices that might be conducive to her own ends and is able to choose which ones to endorse without external coercion or influence.

Chambers argues that liberals are often committed to the safeguard of second-order autonomy but not of the first-order one. In their view, “a person could autonomously choose to live a nonautonomous life, such that she has second-order autonomy but not first” (Chambers 2008:163). To illustrate the point, Chambers refers to the work of Nussbaum,¹² according to which “[s]econd-order autonomy must be protected, but individuals must be free to use their second-order autonomy to alienate their first-order autonomy, for example by joining a convent” (2008:165). According to Nussbaum, who is an advocate of the capability approach, everyone in a polity should enjoy a set of fundamental liberties, among which the possibility to determine one's own conception of the good and to live in accordance with it. In her view, there might be cases in which a person, or a group of persons, will want to renounce their first-order autonomy in order to pursue their second-order autonomy. Thus, a religious individual might be willing to forgo her first-order autonomy by joining a monastic order, abstaining from eating certain food or drinking alcohol, avoiding marriage and divorce, wearing a headscarf or a traditional dress and so on, as a means to achieve her second order goal of respecting the prescriptions of her faith. If such a person has actively chosen this path, her actions will be non-autonomous only on a first-order level, but not on the second-order one. Since a system of justice should grant that all enjoy the same capabilities, but not that everyone will choose to take advantage of them, it cannot prevent people from leading a non-autonomous life when such a life has been autonomously embraced.

¹² See Nussbaum 1999.

Chambers points out that this way of seeing autonomy is typical of political liberalism. Indeed, while the comprehensive liberalism that Chambers's endorses is interested in the realisation of autonomy in every aspect of a person's life, political liberalism regards it as a “*political* value only” (2008:165). Political liberals (such as Nussbaum and Rawls) believe people's autonomy must be realised in the political sphere by granting them equal rights and freedoms, including the possibility to participate in the civic life of a polity. However, autonomy must not necessarily be seen as something that people will find valuable in every aspect of their existence, for they might regard non-autonomous lives as perfectly valuable and worthy of being lived. Therefore, the state should protect people's capability to choose their own ends, but should not interfere with their way of life, even non-autonomous ones, when they are conducive to those chosen ends.

According to Chambers, however, the political liberal stance towards the concept of autonomy is untenable when we consider the extent to which social construction shapes our desires and beliefs. Nussbaum herself is aware of this problem, and recognises that people might adapt their preferences in response to the available options open to them, so that such preferences might be largely determined by the institutional framework in which they are formed. Besides, she observes that having (or not having) “various basic human capabilities is important in itself, not just because the person minds it or complains about it” (Nussbaum 2000:144). Every person should be able to have those things that are necessary for her well-being, such as health and nourishment, irrespective of whether she values these things or not. That is to say, a person might adapt to her circumstances so as to find them satisfactory, but that should not prevent the state from trying to improve those circumstances when possible. Thus someone who is born in an oppressive environment might not feel that her oppression is unbearable, or might fail to recognise that she is oppressed, but a system of justice should nonetheless give her the possibility to free herself from those practices that hinder her autonomy and well-being.

The difference between Nussbaum's political liberal approach, and Chambers's more comprehensive approach, lies in that the latter but not the former endorses state intervention to secure that a person not only has the capability to do (or to have) something, but also takes advantage of such a capability. In Nussbaum's view, a person has the right to be nourished adequately, but might still be free to choose not to eat. Chambers, by contrast, claims that we cannot define something as intrinsically worthy while at the same time allowing people to renounce it. Indeed, since individuals' choices

are at least in part the result of social influence, “we must consider whether individuals are encouraged to make choices that threaten their equality” and, if necessary, prevent them from performing such choices (Chambers 2008:172).

Chambers argues, in particular, that state intervention is justified in cases of practices that are “significantly harmful” and whose benefits “depend on the acceptance of a social norm – particularly one that is unequal or unjust” (2008:195-196). FGM and breast implants, in her view, are both practices of this sort. Their consequences are everlasting, often dangerous for a woman's health, and the benefits that they bring are contingent on social norms of marriageability and beauty. Moreover, such practices put women in a situation of inequality by perpetuating norms of male domination and female subjugation and objectification, and are therefore unjust. The fact that women exposed to these practices are often or always willing participants does not undermine the case in favour of state action. People's desires are moulded by the conditions in which they live, and hence a person may truly desire for herself something which is objectively harmful. However, “[w]e must refuse to respect those desires which themselves undermine respect for the desiring individual” (Chambers 2008:199). This is especially true in cases where members of a certain group tend to make choices that are harmful or disadvantageous for themselves.

I shall touch on this issue in the next section.

3. Chambers's objections to Barry's liberalism

According to Chambers, although Barry is a universal egalitarian liberal, and highly critical of multiculturalism, he nonetheless underestimates the extent to which the phenomenon of social construction may pressure individuals into maintaining their group membership, even when their group tends to be oppressive towards them. Chambers points out, for instance, that people often grow up into a religion, and thus acquire certain beliefs and habits from an early age, when they are still not able to reflect on the implications of their faith. Their preferences and aspirations will thus tend to reflect those of the religious community of which they are members, and it may become difficult for them to reject unjust norms when this rejection could mean their expulsion from the community itself, or be discriminated by their peers. Even if these people are formally free to leave their group, they will not always take advantage of this freedom and will prefer to submit to the oppressive rules of the group rather than abandoning (or being expelled from) it. As Chambers reminds us, this is the situation of

women in most religious groups: even though they are treated unequally (for instance, by not being permitted to file for divorce from their husbands, or to being ordained ministers of their faith), they will be unwilling to oppose the *status quo*, be it out of faith, habit, peer pressure, fear of losing their membership or being ostracised by other members, and so on.

In Chambers's view, a commitment to liberalism requires that individual autonomy be regarded as having the priority over group autonomy. Therefore “many unequal internal norms of cultural and religious groups should be restricted by a liberal state” (Chambers 2008:118). By contrast, Barry is persuaded that a liberal state should only guarantee to all individuals an equal range of choices, and that it should be left to them to decide which choices to choose. As stated in the first chapter, Barry believes that discourses of justice should be more concerned with fairness of the procedures than with their outcomes. Thus, a polity should guarantee to women the possibility to choose between pursuing a career or childrearing. Barry asks us to suppose “that women were as highly qualified as men but disproportionately chose to devote their lives to activities incompatible with reaching the top of a large corporation” (2001:94). He argues that the state should make sure that the procedure through which women can study, train and be hired to become managers is fair. Nonetheless, there is nothing intrinsically unfair in the fact that many women choose childrearing over a career. Indeed, “there may be group-related preferences for certain occupations”, so that women, as a group, would prefer to stay at home with their children rather than competing for managerial positions (Barry 2001:98).

Against Barry, Chambers argues that justice is not guaranteed by the availability of certain choices. It is not sufficient for women to just not to be formally prevented from choosing to become managers, if the conditions in which such a choice has to be made is one in which women are culturally and economically pressured into being full-time mothers. Chambers defines these social pressures as an exemplification of what she calls the “influence factor” (2008:123). In itself, influence might not be problematic. As stated above, social construction pervades every aspect of our life, so much so that some sort of influence is always exercised on our choices by the social context in which we find ourselves. But when a group persists in making choices that result in disadvantageous outcomes, the influence factor is accompanied by what Chambers calls the “disadvantage factor”, which is the most problematic of the two (2008:121). When women decide to stay at home rather than pursuing a career they become dependent on their husbands, and thus less autonomous and able to face oppression within the family.

Besides, these women put themselves in a situation of “*enduring disadvantage*”, in that returning to work and reaching top positions would become very difficult, if not impossible, for them (Chambers 2008:122). Therefore women's formal freedom to choose a career over being full-time caretakers is insufficient to secure that no injustice takes place. In Chambers's view, these inequalities could be counteracted only by state action aimed at reducing the effects of the disadvantage factor through targeted policies, advertising campaigns and education.

Chambers believes that the reason why liberals such as Barry are cautious in affirming that the cases just considered should be a concern for a system of justice is their “weariness to infer oppression when the oppressed are unprotesting” and their conviction that imposing on people even what is good for them may be more harmful than beneficial (2008:130). Moreover, a liberal might worry that state action could turn oppressive if heavily exercised. Contrary to this objection, Chambers argues that public and private are not separate spheres, nor are they separable. Indeed, “[i]t is often precisely those oppressions which occur in the private sphere that are the most damaging to the freedom and autonomy of the individuals who suffer them” (Chambers 2008:131). The state does not recommend that women to abandon their careers when they become mothers, nor does it forbid them to file for a divorce. Nonetheless, pressures of these kinds might be exercised through consolidated social practices and religious traditions. When this is the case, Chambers argues, the state should intervene. To illustrate the point, she takes as an example the case of a Muslim girl who wishes that a ban on wearing headscarves at school is enacted, or otherwise she will be forced by her relatives to wear one. Chambers concludes that “[i]f women want to take advantage of the equal freedoms that liberalism offers them, it will be much easier for them to do so if those freedoms are 'imposed' on them by the state than it would be for individual women to reject the norms pressed on them by those to whom they are close and on whom they may be dependent” (2008:132).

To deal with cases of this sort, Chambers envisages the creation of an “equality tribunal” to which people could appeal when they feel that a breach of their equality has been committed. In Chambers's view, the model on which this institution should be designed is that of the employment tribunals, that can issue recommendations and establish compensations or further penalties for those who do not comply with rules of fairness and equality. There may be, however, some obstacles to the perfect functioning of the equality tribunal that Chambers herself recognises. First, oppressed members of a group may be so disadvantaged that they could be unable or unwilling to appeal to it. In

reply, Chambers simply suggests that the state should recur to awareness-raising and education campaigns designed to promote the tribunal, so that people would become more conscious of their rights and how to demand justice when they are not respected. Second, a group member who denounces unequal norms in her group may risk exclusion and marginalisation. But Chambers believes that the equality tribunal represents an alternative to exit from one's own group, and a better one: by appealing to the tribunal, those who are unsatisfied with the norms of their group could vent their dissent and demand justice both for themselves and for every other member. By contrast, should the only options be adaptation to the unequal norm or exit from the group, no complaints could be raised against unjust practices and such practices would persist. That is to say, the equality tribunal, together with awareness-raising campaigns through advertising and education, could offer a valid alternative for individuals between blind conformity to a group's unjust norms and outright exclusion from that group's membership.

4. Normative theory and objections to Young's politics of difference

In accordance with feminist tradition, Chambers argues that the effects of social construction can be challenged and downscaled by means of consciousness-raising. In her view, “[t]heory and consciousness-raising may be the first step toward emancipatory and egalitarian change”, even though “state action must follow” (Chambers 2008:70). The state is involved in the shaping of individuals through social construction, and its non-intervention in counteracting inequality could result in greater oppression and inequity. That is to say, people may come to have the necessary intellectual resources to fight for their equality thanks to consciousness-raising, but they still need the external support of the state in order to render their enfranchisement effective.

Consciousness-raising and state action are not, however, in themselves sufficient to counteract the bad effects of social construction. Indeed, social construction is an inevitable aspect of our living together within societies, and not necessarily a negative one. Therefore we must first determine which instances of social construction are bad, or unjust. In order to do so, we need the help of normative theory or, in other words, “a standpoint of universal normative principles that do not depend on social norms for their validity”, and through which such social norms might be examined critically (Chambers 2008:92).

The normative principles adopted by Chambers are liberal ones, such as

freedom, autonomy and, above all, equality. In her view, liberalism has in itself the normative resources to counteract the negative aspects of social construction. Indeed, even though choices are always influenced by the context in which they are made, liberalism “allows individuals to make their own choices about their way of life, as free as possible from coercion and injustice” and “is the best way to accommodate difference” (Chambers 2008:100). Young, in particular, by combining liberal commitments with a feminist approach and an awareness of the phenomenon of social construction, has been able to construct her theory of a politics of difference. As seen in the second chapter, Young argues that groups within a society should be able to participate in the public life of a polity and to positively affirm their experiences and points of view against oppression and domination.

According to Chambers, however, Young's theory is problematic in at least three senses. First of all, while Young claims that disadvantaged groups should be accorded a different treatment rather than be assimilated by the mainstream society, Chambers points out that “the difference between the politics of difference and the ideal of assimilation is not that clear” (2008:102). In other words, we must not forget that the rationale behind treating people differently is to treat them equally, or fairly. There might be cases in which equality and fairness require that people be treated differently, such as when the process of assigning to someone a position or a job takes into account factors such as ethnicity in order to secure that people from disadvantaged groups are not overlooked or discriminated against. However, there might also be cases in which equality and fairness require that people be treated in the same way, so that everyone “could be said to be treated according to the same principle if that principle were something like 'position should be allocated according to some combination of talent and compensation for past injustice or a deprived background'” (Chambers 2008:103).

Secondly, while Young is a supporter of group autonomy and self-organisation, Chambers is concerned with individual autonomy, for “[g]roup autonomy must not override the autonomy of the individuals within the group, and must not contradict the basic liberal rights that the state guarantees” (2008:105). Chambers notes that cultural and religious groups might use the autonomy given to them by the social compact to limit the autonomy of their members, and justify this behaviour by appealing to existing group traditions and the need to preserve them in order to grant continuity to the groups themselves. Thus a religious group, for instance, could impose restraints to women's liberty and autonomy by forcing or persuading them to respect its customs, even when such customs are detrimental to their equality and well-being. Many examples could

illustrate this point: even without recurring to the extreme case of FGM, one can observe that men and women are hardly treated equitably in most religious groups. Some women are required to cover themselves, and to be constantly tutored by a male relative, while others are prevented from filing for a divorce, being ordained ministers of their religion, and so on. When challenged on these points, religious groups might answer that they are just following the prescriptions of their faith, and that not to do so would endanger its continuity.

Thirdly, while Young holds that group difference should be positively affirmed rather than merely protected and tolerated, Chambers argues that the kind of positive affirmation demanded by Young requires a degree of empathy and understanding towards different backgrounds and ways of life that would be implausible to expect from most people. Thus, for instance, Young's approach would require that even people who are not favourably disposed towards homosexuality should empathise with the homosexual cause, and affirm its lawful existence within a society. But, as Chambers points out, it is unthinkable to ask that we affirm "ways of life that we might find at best unfamiliar and at worst repugnant" (2008:106). Moreover, "it is both impossible and undesirable for us to affirm publicly all group experiences over and above stating that we allow them to persist" (Chambers 2008:107). According to Chambers, there must be reasons attached to the affirmation of a group, so that "we necessarily imply that we do not value cultures that do not have these valuable attributes, or to the extent that they do not: we will have to be less affirming of those cultures which produce no art, impede their members' flourishing, and impose themselves on their members" (2008:107). Chambers maintains that even Young's politics of difference cannot be affirmative of every group within a society, especially those composed by fascists (e.g. Nazis), or religious extremists (e.g. the Taliban). What is needed, again, is to maintain a normative and critical approach to issues related to social construction and group differentiation. With the help of such an approach we may come to see the ways in which they can be unjustly detrimental to individual autonomy.

I shall deal with these objections in the next section.

5. Response to Chambers's objections to Young's theory

Chambers's concerns about Young's politics of difference highlight the fact that while recognising social construction and the consequent existence of group differentiation is beneficial towards the realisation of a more equitable society, a policy

of group affirmation might be problematic in its own way. Young herself, as we have seen in the previous chapter, admits that her theory might not be easily realisable. For instance, a politics of difference presupposes a community of reasonable people who are willing to cooperate and offer reasons for their positions in public debates. Moreover, a politics of difference requires the definition of which groups should be counted as disadvantaged, and thus in need of special rights to protect their freedom from domination, and so forth.

However, the three objections raised by Chambers might be responded to by an advocate of Young's position in the following way. First of all, Chambers argues that the difference between assimilation and differentiation is not as clear-cut as Young seems to believe. Indeed, there are many ways in which equality can be realised. To achieve it, sometimes groups need to be treated differently, and sometimes they need to be treated in the same way as the rest of the social compact. Thus among people applying for a job, those belonging to ethnic minorities may need to have their ethnicity acknowledged in the hiring process, in order not to be disadvantaged. At the same time, "the aim is to remove the disadvantages associated with ethnicity and thus to transcend difference" and, as previously stated, a universal principle might be formulated according to which both merit and background are taken into consideration when choosing employees (Chambers 2008:103).

Chambers is right in pointing out that there are cases in which equality is achieved precisely by treating everyone uniformly. Besides, while it remains true that there are cases in which some people would wish to see their differences acknowledged and affirmed, there are other instances in which a disadvantaged group may simply want to be treated in the same ways as others. Take the example of homosexual people. Several gay and lesbian people would certainly want to have their experiences and points of view recognised as equally meaningful, and would wish to affirm them. Many others, may say that what they want is to be endowed with the same rights that heterosexual people enjoy, such as the right to marry, adopt children, and to be the recipients of all the welfare benefits that couples are entitled to. This might also be one of the reasons behind Young's insistence that a double set of rights be in place at all times, to both protect basic equality for everyone and grant fair treatment to the disadvantaged. Young makes clear in her work that policies oriented towards empowering oppressed groups need to be grounded on the assurance that a certain level of equity is already in place. Therefore we might say that Chambers's argument is valid one, but that it does not represent an objection to Young's theory, since the latter never

claims that differentiation is the path to follow in any case where equality is concerned.

Secondly, Chambers is worried that granting autonomy to groups may have detrimental effects on their members' individual autonomy. Some groups – especially cultural and religious ones – could use the autonomy granted by the state in their internal affairs to justify the oppression of some of their members. Thus, some religious groups might be allowed to limit their women's liberties by imposing their patriarchal traditions upon them. It must be noted, however, that Young never claims that group autonomy should be allowed to override the basic egalitarian rights of a group's members. That is to say, while groups may be endowed by special rights designed to protect their specificity against the oppressive stance of the majority, these rights could not be used to justify internal oppression.

More importantly, Young is very clear about the fact that only social groups, not ideological groups, deserve special rights. Indeed, Young never takes into consideration religious groups in her discussion of the politics of difference, and that might be because she regards them as a kind of interest group (in the sense that their members desire the same goals) or ideological group (in the sense that their members hold certain shared beliefs), rather than social ones. Besides, Young states that only disadvantaged and oppressed groups need to be endowed with special rights. Religious groups like the kind discussed by Chambers are often not disadvantaged or oppressed, at least partly because of the prominent role they play in determining many aspects of social construction, namely in the shaping their followers' beliefs, desires and range of acceptable choices. Therefore Chambers' worries that group autonomy, while retaining their general validity, cannot be used as a refutation of Young's theory, since this kind of autonomy for cultural and religious groups is not defended by Young herself.

Thirdly, Chambers claims that the level of empathy towards people's differences required in Young's approach is too high, and thus hardly feasible. Since “it is much easier to take on another's point of view for the purposes of designing fair political institutions than it is to affirm and value their different, alien experiences and culture”, the empathy required by “liberal neutrality”, which is “technical or philosophical, a matter of conducting a thought-experiment”, is better suited to the task than Young's more demanding one (Chambers 2008:106). However, the capacity to empathise with the differences seems to be for Young a *result*, rather than a *requirement* for the realisation of the politics of difference. That is to say, Young embraces here a similar view to that of Barry's, according to which different perspectives should be listened to, and be pondered fairly by the parties involved by putting mere self-interest aside. The

guiding criterion to arrive at a decision would be its reasonableness, rather than its capacity to create bonds of empathy. Nevertheless Young is persuaded that by including different groups and experiences into public debates, and by allowing them to express themselves freely, we could enjoy the positive aspects of living together and flourish as a community.

Chambers also points out that not all cultures deserve to be affirmed. In her view, there must be reasons attached to the affirmation of a group, such as its contribution to the arts, its capacity to promote the flourishing of its members, and so on. Hence, not every group should be affirmed: if a group does not contribute to the arts, for instance, or if it adopts an oppressive stance towards its own members. This objection, however, would work only if Young's politics of difference were advocating the affirmation of as many groups as possible within a society, or the affirmation of difference *per se*. However, as already noted, Young restricts the application of her theory to a very specific set of oppressed groups and never claims that it should be extended to any group.

Chambers's concerns for the problems posed by granting autonomy to cultural and religious groups remain well-grounded and, in fact, could be (and have been) used as objections against Barry. However, all the other criticisms might be responded to by pointing out the explicit boundaries that Young herself sets for her approach. As noted in the previous chapter, Young's position suffers from some limitations, among which is the need of a well-intentioned public (and a well-intentioned state) willing to include different perspectives into the decision-making process, and the problem of determining which groups should be counted as relevantly covered by a policy of group differentiation. Limitations such as these might affect Chambers's theory as well as Young's. Indeed, Chambers's proposal of state intervention would make sense only if that intervention was carried out with the best possible intentions of counteracting inequalities, rather than controlling its citizens' lives. Moreover, difficulties may arise concerning the determination of which groups are worthy of affirmation, and which were not.

I shall deal with this difficulties in the next section.

6. Objections to Chambers

As noted at the beginning of this chapter, Chambers's theory, although critical towards both, combines elements of Barry's and Young's approaches. By taking into

consideration the interests of both groups and individuals, she seems to realise a perfect balance between the demands of justice as impartiality and those of the politics of difference. However, a closer examination reveals that her theory presents, as well as the others, some problematic aspects. Two sets of criticisms, in particular, might be made against it.

The first set of objections, or criticisms, that might be raised against Chambers's approach regards state intervention. There are several ways in which domination and harmful practices can be counteracted, and some of them do not necessarily require the intervention of the state. These include normative theory and consciousness-raising, although we might think that in order to be effective they will need to be backed by awareness-raising and education campaigns, which are in the hands of the state. Some ways of redressing domination rely instead heavily on state intervention. This is the case of the equality tribunal and the ban on harmful practices such as FGM, which should be extended (in Chambers's view) to breast implants. Chambers argues that the state is responsible for social construction, for it shapes its citizens' desires and beliefs through its institutions. Therefore, the state should also take responsibility in rectifying those social norms that exercise a bad influence on people's lives.

However, it might be pointed out that state intervention directed at limiting people's freedom to make certain choices, even when devised with the best intentions, could turn oppressive. Moreover, the liberals' worry that forcing on a person what is deemed good for her might be more harmful than beneficial is not ill-founded. Indeed, not only state interference can be oppressive, but it can also be damaging to a person's sense of autonomy and well-being, and thus counterproductive. Chambers uses the example of the Muslim girl wishing that a ban be enacted so she could go to school without wearing a headscarf to argue that sometimes women may enjoy certain liberties only when such liberties are imposed on them by the law. But this example is only partial, and misses the important possibility (highlighted by Young) that people are *constituted* by their experiences, beliefs and group memberships, and that all these aspects of their lives can be very important to them even when linked to various forms of oppression. Chambers treats individuals' preferences and ways of life as if they were just the product of social construction; in her view, people are *influenced*, rather than constituted, by their milieu and group experiences. She seems to believe that people could renounce these aspects of their lives at any time, if they saw the inequalities that they bring about and if the state backed them in opposing unjust practices. However, this interpretation seems to be contradicted by the fact that most people regard their

beliefs, interests and group membership as something which is highly valuable to them, and that they might consider even controversial practices as something they would rather not renounce. For example, we can envisage a case similar to Chambers's one but with a girl (or a woman) desiring that a ban on wearing headscarves is not enacted, because going around without a veil on her head would be unthinkable for her. Even if we think, as Chambers probably does, that this woman's beliefs are the product of the religious environment in which she has been brought up, we could still maintain that such a ban could be more harmful to her than beneficial in the long run. This woman might feel uneasy about not covering herself as she used to do. As a consequence, she might even decide to drop out of school and remain at home. This would, in turn, hinder her prospects of getting a good job and would put her more at risk of suffering from isolation and abuse.

To be fair, Chambers does not explicitly endorse the ban on wearing headscarves at school. Besides, this case does not seem to present the two conditions which, for Chambers, call for state interference. The practice of wearing a headscarf is not "significantly harmful": it does not imply any permanent modification of the body, nor does it thwart a person's capacity to enjoy freedom and equality in the society in which she lives. A woman might still be discriminated against for being veiled, but that in itself would not justify a ban on headscarves, no more than the existence of homophobia justifies a ban on homosexuality. Needless to say, women might be discriminated against for wearing a veil not in virtue of the veil itself, but because by wearing one they can immediately be recognised as belonging to a certain religion or ethnicity, and might thus become the target of discriminatory behaviour. Note, however, that this fact contradicts the second condition for state interference, namely, that the benefits of covering one's own head are contingent on a social norm. True enough, a woman might do so in accordance with the social norms of her religious community, but at the same time will contravene the canon of the wider society in which she lives, i.e. one in which the norm is that women do not cover themselves. Thus she would enjoy certain benefits in her group, where the practice of wearing a veil is promoted and valued, but non in the society at large, where such a practice can encounter the incomprehension or even hostility of those who follow different cultural norms.

We might think that an alternative to outright prohibition, in circumstances like this, would be to bring the case to the equality tribunal. Such a tribunal should weight harms and benefits implied in this situation, and find a solution to the particular problems raised by this dilemma. Imagine the girl who does not want to wear a

headscarf, but who is forced to wear one by her relatives. She could appeal to the equality tribunal, and demand that something be done to ensure that her will is respected. Similarly, a woman who feels that she has been discriminated against for being veiled, could appeal to the same tribunal, and demand compensation for the harm done to her. In this way, both women would have their autonomy respected, and justice would be done. It remains unclear, however, why would we need a special tribunal for cases of this sort. That is to say, when anti-discrimination and equality laws are in place, should we not simply rely on existing judicial procedures? Does it mean that the equality tribunal would function in a different way? Then if so, which principles would inform it, and which kind of people would be appointed as jurors? These might seem trivial concerns from the point of view of normative theory, but nonetheless show that the design of such an institution could be more problematic than it might appear at first sight. Indeed one might argue that, in order to function in the way envisaged by Chambers, the equality tribunal should be managed by people who share the liberal commitments to equality, freedom, and autonomy. But, as we have seen throughout the course of this work, even among liberals there is no consensus about the exact range and limits of these commitments, and should the equality tribunal be composed also by someone less sympathetic towards the liberal cause, its outcomes would be even more uncertain.

Besides, what makes Chambers think that people suffering from group-based oppression would appeal to the tribunal at all? The tribunal approach relies on the fact that people would be persuaded of its efficacy in solving equality-related issues, and that they would have the necessary intellectual and material resources to fight against oppression. One might still argue that many would not take advantage of the tribunal, for several reasons: they might think that its use would exacerbate conflicts with their own family or group rather than settle them, or they might find the process of applying to the tribunal and going through its procedures too complicated or time-consuming. Oppressed individuals, and groups, may not be aware that they suffer from domination or, even when they do, might lack the intellectual means to organise and act against it. Moreover, people who are discriminated against may suffer from financial insecurity and deprivation, and thus find that they have not sufficient means to fight against their oppressors. That is to say, a woman who wishes to complain about her relatives' interference with her desire to not wear a veil should have confidence in the tribunal and be willing to go through its procedures. She should be able to articulate her complaint and should be sure that she would have sufficient means to bear the costs of the trial and

support herself independently during and after it. These are not necessarily the conditions in which many of those more in need of the equality tribunal would be.

The use of the tribunal might be promoted through a programme of extensive awareness-raising and education campaigns. However, this would not be sufficient to guarantee its efficacy in counteracting inequalities within a society. Indeed, the tribunal would not be able to empower oppressed people unless they are, to a certain extent, already empowered. This is the reason why Young, for instance, argues that oppressed groups should be endowed with special rights, take part in public decisions, and be able to organise themselves. In other words, the equality tribunal would function only if embedded within the existing social structure, and accompanied by a wider programme of cultural change and support for the weakest members of society. It could not, in itself, promote such changes or grant support to those more in need of it.

While Chambers does not explicitly endorse the prohibition of headscarves, she is a firm supporter of a ban on breast implants. In her view, breast implants are similar to FGM, in that they irreversibly modify a woman's body, cause significant health problems, and bring benefits that depend only on unjust social norms of female beauty and sexual objectification. Besides, breast implants represent a violation of women's first-order autonomy, since (in her view) the majority want them only to achieve their second-order end to be attractive or famous. They might also be seen as a violation of women's second-order autonomy, in that having breast implants will endanger the possibility of living a healthy life free from medical complications, and a healthy life is supposedly something that most people would find desirable, or a goal to pursue. Chambers supports her arguments with extensive documentation on the harms caused by breast implants, and suggests that more and more women will want to undergo this practice of surgical modification when they see that breast implants have become the new "norm".

There are, however, some important distinctions to be made between FGM and breast implants. The first is that while the former is mostly practised on children or very young girls who lack the intellectual and practical means to oppose to it, the latter generally involves adult women who are informed (or can easily inform themselves) of the risks linked to surgical operations and submit themselves to them voluntarily. Chambers argues that the fact that women ask for breast implants and are willing participants to the practice does not make breast implants permissible, for these women's desire for surgical modification is the product of the society in which they live.

Those who opt for breast implants do so in order to conform to current standards of beauty and because they think that without them their lives will be less fulfilling and successful. If these women could consider themselves, or be considered, beautiful the way they naturally are, and if they saw an alternative path to success that does not involve plastic surgery, they would surely opt out of this option. Similarly, women would not subject themselves or their daughters to FGM if they were not compelled to by the norms of their society to do so in order to be able to marry, and if marriage were not an essential requisite for their survival and well-being. However, another important distinction between FGM and breast implants is that while not having the latter performed on oneself does not hinder a woman's possibility of living a meaningful and successful life, having FGM performed on her may be the only way in which a woman could secure a future for herself. Widespread as it might be, surgical modification is not “the norm” in our societies, and many women can reject it without fear of being discriminated against, marginalised, or suffer violence as a consequence. By contrast, FGM *is* the norm in the societies in which it is practised: a woman cannot reject it without being destined to a life of deprivation, marginalisation, and violence. Even admitting that a woman without breast implants is prevented from pursuing a career in show business (which is, by the way, a controversial claim), such a woman will still have many career options open to her (and moreover, we might assume that many women are not even interested in entering show business). The same does not apply to non-mutilated women in a society where *all* are subjected to genital mutilation, and where there are no other feasible options.

One might also argue that preventing women from having breast implants is a violation of their autonomy, since we could expect that most women would be able to consider pros and cons before the operation, and to reflect on whether surgical modification would enhance the quality of their lives. By assuming that women are so entrenched in social construction that they cannot see for themselves what is better for them, then, Chambers seems to assume an implausibly paternalistic stance. To answer to this objection, Chambers claims that even though her ideas are paternalistic “the potential evil of their paternalism is mitigated by the fact that [her] proposals are harm-preventing rather than benefit-promoting, so that many options are left intact” (2008:221). That is to say, Chambers does not want to ban breast implants as a way to promote a higher good, but just as a way to protect women from harming themselves. Besides, she argues that responsibility for the harmful practice should not rest on women's shoulders, but on those of the people who exercise the practice, so that if

someone were found practising breast implantation it should be the surgeon, and not the woman, to face sanctions. As for autonomy, Chambers is aware that her project can sometimes “undermine individuals' autonomy” (2008:226). She accepts that this can be seen as a limitation in her approach, but argues that “[i]t is not, however, a decisive objection, because there is no reason to think that autonomy is the only value, or that it is the most important value in a way that rules out trading it off for other values, or that it ought to be maximized” (Chambers 2008:228).

The “other values” to which Chambers is referring are equality and freedom. These values are the end to which, according to the liberals, every policy should aim, and the standpoint from which to judge every habit, tradition, and norm. Whether equality and freedom are promoted is, in other words, the litmus test that indicates not only when a practice is worthy of being preserved but also when it should be interfered with. All social practices, group-based ones included, must pass the test. This brings us to the second set of objections that concern the way in which Chambers distinguishes between groups that merit respect and affirmation, and those that do not.

In the discussion of Chambers's objections to the politics of difference we have seen how in her view group affirmation should be supported by reasons for such affirmation, and how she claims that “we will have to be less affirming of those cultures which produce no art, impede their members' flourishing, and impose themselves on their members” (2008:107). In other words, Chambers seems to think that the only groups that are worthy of affirmation are those which have a valuable contribution to give to the world and that do not oppress their members. According to Chambers, liberalism cannot maintain a neutral stance towards every conception of the good, but must necessarily rule out those conceptions of the good (and related ways of life) that are contrary to principles of equality and freedom. Similarly, a liberal state cannot allow a group within a society to be respected and affirmed if that group limits the individual autonomy of its members. Note, however, that Chambers herself, as we have just seen, does not regard autonomy as the most important value in a person's life, and admits that even her approach could sometimes be contrary to individual autonomy. Besides, as argued in the case of a woman who wants to wear a headscarf, we might be mistaken in defining as oppressive certain group-based practices that members of that group might regard as non-oppressive. Meaning, an individual might believe that her flourishing resides in following the norms of the group to which she belongs. To these observations, Chambers would answer that the mere fact that a person is happy to live a life of

oppression and restrictions does not excuse the state from intervening to improve her situation. More often than not, a person who accepts her oppression does so only out of habit and because she does not see a better alternative within her reach.

One might still argue that we could try to preserve even those cultures and ways of life that are oppressive towards their members, by forcing them to dismiss those attitudes or traditions that are contrary to equality and freedom. That female members of some groups are not permitted by their religions to file for a divorce, and thus suffer from an unequal treatment in this aspect of their lives, does not entail that these religions should be banned *tout court* by a liberal state. The polity should encourage the dismissal of these unequal practices and grant women the same rights, while at the same time preserving all the other non-oppressive elements of these faiths. This might be conceded by Chambers herself, for she states that if a culture within a society “is to survive at all, it must be in a modified form that enables *all* individuals to participate in it in conditions of equality, rather than requiring...to choose between that equality and their culture” (2008:150). However, it might also be argued that depriving a group of some of its cultural practices could result in the dissolution of its very identity. Take for instance the case of Amish groups, which reject much of modern technology and way of life, and are not allowed to marry outside the community. Should the state impose technology on these groups, or force them to allow their members to marry outside the community, the Amish culture would lose crucial aspects of its identity, and might eventually disappear.

The second element put forward by Chambers as a reason to preserve a group is still more problematic, for it states that a group should make a positive contribution to the arts (perhaps intended in a broader sense) in order to merit its affirmation. One could ask, what would happen to a group that has no significant contribution to give to the rest of the world, or to the society in which it resides? Moreover, who is going to decide which groups satisfy this requirement, and which not? Take again the example of the Amish. One might argue that they produce no valuable form of art nor science, and that they do not contribute in any relevant sense to the intellectual advancement of the social compact. Should we then conclude that they have no right to exist, or to be respected, or to be affirmed by society at large, and to what extent? An advocate of the politics of difference might respond that even the perspective of Amish groups should be listened to, especially when a decision regarding them has to be made, and that they should enjoy special rights of protection if threatened by the pressures of the majority. For in the politics of difference, the mere existence of these groups would be a positive

element for the flourishing and well-being of the society in which it exists. By contrast, Chambers's approach seems to imply that a group should somehow “merit” its affirmation. Chambers claims that limiting group autonomy is necessary to ensure that all individuals are treated equitably. But such an approach leads us to Young's starting point: that refusing to accept difference is a way to perpetuate oppression, and to foster the interests of the dominant groups. When seen in this light, Chambers's theory is less radical than it initially appears to be, and more similar to the liberal paradigm that Chambers wishes to challenge.

7. Conclusions

In this chapter, I have argued that Chambers's view represents, in some way, a synthesis between Barry's and Young's approach. Chambers argues that the phenomenon of social construction permeates every aspect of people's lives and that it may hinder individuals from performing autonomous choices. This fact has often been overlooked by liberals such as Barry, who accepts that it might simply be the case that different groups display different preferences without this being a concern for justice. By contrast, Chambers argues that some groups are led to perform disadvantageous choices as a result of the influence exercised upon them by the environment in which they live.

Chambers claims that the negative effects that social construction has on individuals can be counteracted by means of the normative theory, consciousness-raising campaigns and education, and state intervention. She argues in favour of the creation of an equality tribunal, which people who feel that their equality has not been respected could appeal and obtain justice.

Chambers also raises some objections against Young's politics of difference. First of all, she points out that the distinction between assimilation and differentiation is less clear-cut than Young thinks, and that sometimes people just need to be treated in the same way in order to be treated equitably. Secondly, Chambers is worried that granting a certain level of autonomy to groups could run counter to the interest of their members, in that they may see their individual autonomy threatened by the group itself. Thirdly, Chambers is persuaded that it is impossible to empathise with others in the way Young seems to require us to do, and that moreover we should not affirm those groups which produce no art or interfere with their members' autonomy.

After having responded to Chambers's objection to Young by pointing out the limitations that Young herself has defined for her theory, I have argued that Chambers's

position is problematic in at least two ways: it relies too heavily on state interference, and its requisites for group affirmation are too strict and controversial. In this way, Chambers's theory ends up being less attentive to the needs of oppressed groups than it could be, and more in line with the traditional liberal view according to which everyone should be treated according to the same principles, irrespective of group membership.

Conclusion

In this work, I first analysed Barry's theory of justice as impartiality. According to this theory, justice is based on a reasonable agreement between well-informed parties that participate in conditions of equality in the decision-making process and have veto power over the proposals under consideration. The parties involved are motivated by a desire to behave fairly rather than to advance personal interests. Besides, none of them is endowed with special privileges in virtue of their class, gender, group membership and so on. In Barry's view, impartial justice rests on no particular conception of the good, and hence can accommodate various conceptions into its scope. Fairness of the process is more important than fairness of the outcomes, and the ends to which justice as impartiality aims are equal participation and procedural transparency.

Drawing on the theory of social construction, I then argued that the theory of justice as impartiality cannot, in itself, put an end to many forms of inequality that are deeply ingrained in our every-day practices and cultural norms, which impartiality would leave untouched. That is to say, while impartial justice wants to give the same opportunities and rights of participation to everyone, it fails to take into account the fact that many would be unwilling or unable to take advantage of such opportunities and rights. Moreover, I have argued that treating everyone "in the same way" does not necessarily amount to treat them equitably. People's differences play a pivotal role in determining their identity and social position, and need to be taken into consideration, instead of being dismissed as irrelevant from the point of view of a system of justice.

After having analysed Barry's formulation of justice as impartiality, I focused my attention on Young's theory of a politics of difference. According to this theory, a system of justice should not only be concerned with distributive issues, but should also take into account decision-making processes, division of labour and culture. Injustice refers to the phenomena of domination and oppression, in their various forms of exploitation, marginalisation, powerlessness, cultural imperialism and violence. In Young's view, oppression is a structural concept, for it is spread through all levels of society; moreover, it is a condition suffered by groups. Individuals are constituted by groups, which are composed of people who share certain attributes and ways of life in common with other members of the same groups, but are different from those of others. Hence, justice requires that group differences are respected and affirmed. In order to do so, a polity should grant its citizens a dual system of rights: one that is the same for all,

and one which is group-sensitive. Oppressed groups should also be granted special representation in the decision-making process, where just outcomes are as important as procedural fairness: they should organise themselves, propose policies, and retain veto power over those resolutions that affect them directly.

Against Young's proposal of a politics of difference I argued that such a proposal might be insufficient to counteract important forms of inequality in our societies. By focusing only on issues of oppression between groups, Young leaves open the question of how to deal with issues of oppression *within* groups, when some members exercise domination over the others. Following Chambers, I also pointed out that group autonomy might run counter to individual freedom, and that some groups might limit their members' autonomy by appealing to the necessity to preserve those groups' identities.

A more extensive discussion of Chambers's account is the subject of the last chapter of this work. According to her, liberal values such as freedom and autonomy are the basis for equality, but liberals need to recognise the effects of social construction on people's ability to make choices that are not harmful and disadvantageous for them. The theory of social construction tells us that power is everywhere and that, moreover, it has creative elements in addition to repressive ones. Indeed, the creative capacity of power is much more effective than its repressive force, in that it makes people internalise norms of behaviour and shapes their desires and preferences. From this it follows that even uncoerced choices are not as free and autonomous as they might appear. Therefore individuals should be prevented by a liberal state from making harmful choices, even when the individuals in question say that such choices are the result of free and autonomous deliberation. State intervention should also limit the extent to which groups exercise an influence on their members so that they make disadvantageous choices, and should institute an equality tribunal to deal with cases in which people feel that they have been wronged or interfered with by their group's norms in a way that threaten their equality and well-being.

To Chambers's approach I objected that it relies too heavily on state intervention, which could turn oppressive towards the people it should protect, and might take a paternalistic attitude that would contradict Chambers's endorsement of liberal values such as freedom and autonomy, in addition to equality. Her formulation of the equality tribunal is also problematic, for it remains controversial whether people would use it (or would be able to use it). Furthermore, I have raised concerns on Chambers's idea that not all cultures and group differences should be affirmed, but only those that satisfy two

requisites: they are not oppressive towards their members, and have a valuable contribution to give to the broader society. Requiring groups to demonstrate that they can contribute to the intellectual advancement of humankind and to give up important aspects of their identity, so as to conform to the rules of the broader society, may mean that many of these groups would, in effect, disappear. Thus, to a certain extent, Chambers's theory might be seen as a return to the paradigm of justice as impartiality (where everyone is treated according to the same principles), rather than a defence of the value of difference, and of allowing people to lead the way of life that they deem best for themselves without being oppressed or interfered with.

Everything being considered, while Chambers is right in pointing out the limitations to which Young's theory is subjected, and to raise the issue of how to preserve individual autonomy and freedom of choice against the demands of group autonomy, the politics of difference remains a better alternative to the kind of state interference proposed by Chambers herself. Young's theory is indeed limited, in that it is aimed at the empowerment of social groups only, and says nothing about how other kinds of groups (religions, movements, etc.) should be treated by the broader society. Moreover, Young's approach remains vague on how to counteract the oppression suffered by individuals within groups, since it only postulates that everyone should be endowed with a basic set of rights, among which will probably be the right to individual freedom from group-based influence and coercion. Nonetheless, the kind of group self-organisation and participation proposed by Young as a means to inclusion into the democratic life of a community is better suited to the project of realising that equality which is the foremost value for the liberal theorists. For if it is true that relations of power and oppression permeate every aspect of people's lives (as affirmed by those who accept the theory of social construction), the negative effects of social influence cannot be neutralised simply by recurring to laws and state intervention. As Chambers herself recognises, power is exercised more forcefully through creation than repression, and thus consciousness-raising campaigns and education might be the best solution to counteract various forms of domination and oppression that affect the most disadvantaged ones, be they groups or individuals. Should the disadvantaged enjoy a fair participation in the decision-making process, as envisaged by Young, they could prompt those cultural changes that are necessary to make the society in which they live a more equitable one.

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